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PRECEDENTS IN CONVEYANCING

SECOND EDITION.

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MORTGAGES.

PRELIMINARY NOTE.

STAMP DUTIES.

THE payment of stamp duties on "mortgages" is regulated by sects. 86 to 89 of the Stamp Act, 1891, and a scale of duties is fixed by the schedule to that Act under the head of "Mortgage," &c., as follows:—

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

- (1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—

	Duty.
	£ s. d.
Not exceeding 10l.	0 0 3
Exceeding 10l. and not exceeding 25l.	0 0 8
„ 25l. „ 50l.	0 1 3
„ 50l. „ 100l.	0 2 6
„ 100l. „ 150l.	0 3 9
„ 150l. „ 200l.	0 5 0
„ 200l. „ 250l.	0 6 3
„ 250l. „ 300l.	0 7 6
„ 300l.	

For every 100l., and also for any fractional part of 100l., of the amount secured 0 2 6

- (2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way

	Duty.
	£ s. d.
of further assurance for the above mentioned purpose where the principal or primary security is duly stamped:	
For every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of the amount secured	0 0 6
(3) Being an equitable mortgage:	
For every 100 <i>l.</i> , and any fractional part of 100 <i>l.</i> , of the amount secured . . .	0 1 0
(4) TRANSFER (a), ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:	
For every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of the amount transferred, assigned, or disposed, exclusive of interest which is not in arrear	0 0 6
And also where any further money is added to the money already secured	The same duty as as principal security for such further money.
(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:	
For every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , of the total amount or value of the money at any time secured	0 0 6
And see sects. 86, 87, 88, and 89.	
MORTGAGE OF STOCK or Marketable Security—	
Under hand only. See " <i>Agreement</i> ," and sect. 23.	
By deed. See " <i>Mortgage</i> ," and sect. 86.	

(a) As to a statutory transfer not being liable to any increased stamp duty by reason only of it being designated a mortgage, see sect. 118 (4) of the Law of Property Act, 1925.

For the purpose of the Act, "equitable mortgage" means an agreement or memorandum under hand only relating to the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security) or creating a charge on such property. See sect. 86 (2).

Sect. 7 of the Revenue Act, 1903, enacts that the whole amount of duty payable under paragraph (2) of the above schedule shall not exceed 10s. This section is not retrospective: *Suffield v. I. R. Commrs.*, [1908] 1 K. B. 865.

As to the stamp duty on debentures, see *Knight's Deep, Limited v. I. R. Commrs.*, [1900] 1 Q. B. 217; *Mount Lyell Rail. Co. v. I. R. Commrs.*, [1905] 1 K. B. 161. As to stamp on trust deed to secure debentures, see *City of London Brewery Co., Limited v. I. R. Commrs.*, [1899] 1 Q. B. 121. As to agreement to execute mortgage: *The Limited Realization Co. v. I. R. Commrs.*, *ibid.* 361. As to debenture stock, see sect. 8 of Finance Act, 1899, and sect. 10 of Finance Act, 1907, and *London and India Docks Co. v. Att.-Gen.*, [1909] A. C. 7. As to building societies' mortgages, see Stamp Act, 1891, s. 89; and as to marketable securities, see Stamp Act, 1891, ss. 82 to 85, and Sched. 1, *sub tit.* "Marketable Securities;" sect. 76 of Finance (1909-10) Act, 1910, and sect. 4 of Finance Act, 1899.

As to bills of sale, see sect. 41 of the Stamp Act, 1891; and as to mortgages of life policies, see sect. 118 of the same Act.

THE LAW OF PROPERTY ACT, 1925.

After the commencement of this Act (1st January, 1926: sect. 209):—

"A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage." (Sect. 85 (1).)

"A mortgage of a term of years absolute shall only be capable of being effected at law either by a sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage;

and where a licence to sub-demise by way of mortgage is required, such licence shall not be unreasonably refused." (Sect. 86 (1).)

A first mortgagee's right to the possession of documents is preserved by provisoes to the above sub-sections.

A purported conveyance of an estate in fee simple by way of mortgage operates, in the case of a first or only mortgagee, as a demise of the land to him for a term of 3,000 years from the date of the mortgage, without impeachment for waste, but subject to cesser on redemption, and in the case of a second or subsequent mortgagee, as a demise for a term one day longer than that vested in the mortgagee whose security ranks immediately before that of such second or subsequent mortgagee. (Sect. 85 (2).)

A purported assignment of a term of years absolute by way of mortgage operates in the case of a first or only mortgagee as a sub-demise to him for a term ten days less than the term expressed to be assigned, and in the case of a second or subsequent mortgagee as a sub-demise for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned. (Sect. 86 (2).)

It should be noted, however, that a subsequent mortgagee's term need not necessarily be longer than the term vested in the prior mortgagee, for by sub-sect. (5) of sect. 149 it is provided that: "Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed."

For the definition of "term of years absolute," see sect. 205 (1) (xxvii).

The provisions converting freehold mortgages and leasehold mortgages existing at the commencement of the Act into mortgages by demise and mortgages by sub-demise respectively, are contained in Parts VII. and VIII. of the First Schedule to the Act.

The result of these provisions is that a second or subsequent mortgage is no longer merely an equitable mortgage, but is now a legal mortgage, and as the mortgagee (whether first or subse-

quent) has a legal term of years, he becomes an estate owner within the definition contained in sect. 205 (1) (v).

A charge by way of legal mortgage puts the mortgagee "in the same position as if a mortgage had been effected by a demise of freeholds or a sub-demise of leaseholds" (note to Form No. 1 in the Fifth Schedule), that is, in the case of a mortgage of an estate in fee simple, as if he held a mortgage term for three thousand years without impeachment of waste, and, in the case of a mortgage of a term of years absolute, as if he held a sub-term less by one day than the term vested in the mortgagor. (Sect. 87 (1).)

This being so, it would appear to be more convenient to use the form of mortgage by demise or sub-demise where the effect of the deed is expressed, rather than a charge, where the effect is merely implied by the Act, to which the parties must refer to ascertain their precise legal position.

A useful simplification of transfers of mortgage is contained in sect. 114; which provides that:—

"(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

"(a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

"(b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

"(c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting."

"(2) In this section 'transferee' includes his personal representatives and assigns."

"(4) This section applies, whether the mortgage transferred was made before or after the commencement of this Act, but

applies only to transfers made after the commencement of this Act."

The provisions as to the discharge of a mortgage by means of a receipt (similar to the previously existing provisions with reference to a receipt on a mortgage by a building, &c. society) are contained in sect. 115, which will be found set out and discussed on pp. 136 *et seq.*, *infra*.

It must be observed that "any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected," and the equitable charges mentioned in sect. 10 of the Administration of Estates Act, 1925, require to be registered in accordance with the provisions of that Act. (See sect. 13.)

The above provisions as to mortgages by demise or sub-demise apply only to legal interests in land. Equitable interests can still be mortgaged by means of the same forms as were in use prior to the commencement of the Act of 1925.

Upon mortgagors and mortgagees respectively the following powers are conferred by the Law of Property Act, 1925:—

On mortgagors—

(1) To require the mortgagee (not in possession) to transfer instead of reconveying. (Sect. 95, re-enacting Conveyancing Act, 1881, s. 15, and Conveyancing Act, 1882, s. 12.) This provision applies, notwithstanding any stipulation to the contrary.

(2) To inspect, &c. deeds. (Sect. 96 (1), re-enacting Conveyancing Act, 1881, s. 16.) This applies notwithstanding any stipulation to the contrary.

(3) To redeem one mortgage without any other (restricting mortgagee's right of consolidation). (Sect. 93 (1), re-enacting Conveyancing Act, 1881, s. 17.) This applies only if a contrary intention is not expressed in the mortgage deeds or one of them, and does not apply where all the mortgages were made before 1882.

(4) When in possession, and no receiver appointed, to grant certain leases. (Sect. 99, the terms being longer than under the Conveyancing Acts in the case of a mortgage made after the commencement of the Act of 1925.)

(5) To obtain order for sale in foreclosure or redemption action. (Sect. 91.)

On mortgagees (under deeds made after 1881):—

- (6) When in possession to grant certain leases, &c. (Sect. 99.)
- (7) To sell when mortgage money due. (Sect. 101.)
- (8) To insure. (Sect. 101.)
- (9) To appoint receiver. (Sect. 101.)
- (10) When in possession, to sell and cut timber. (Sect. 101.)
- (11) To recover title deeds. (Sect. 106 (4).)
- (12) To give receipts. (Sect. 107.)
- (13) To obtain order for sale in foreclosure or redemption action. (Sect. 91.)

Powers (1) to (4) may be exercised by second or subsequent incumbrancers. On the death of a sole mortgagee real estate held by way of mortgage or security devolves on his personal representatives, notwithstanding any testamentary disposition. (Administration of Estates Act, 1925, ss. 1 and 3.)

The Law of Property Act, 1925, s. 105, directs how the sale moneys are to be applied after discharge of prior incumbrances, viz.: (1) in payment of costs and expenses; (2) in discharge of mortgage money; and (3) the residue to go to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of sale.

As to the mortgage of registered land, see Land Registration Act, 1925, ss. 25 to 36, and ss. 63 to 68, and see *post*, p. 168.

PRECEDENTS.

I. STATUTORY
CHARGE BY
WAY OF
LEGAL
MORTGAGE.I. STATUTORY CHARGE BY WAY OF LEGAL
MORTGAGE of FREEHOLDS to ONE MORTGAGEE (a).

Parties.

Testatum.

THIS LEGAL CHARGE (b), made by way of statutory mortgage the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (c), of the one part, and [*mortgagee*], of, &c., of the other part, WITNESSETH that, in consideration of the sum of £— now paid to [*mortgagor*] by [*mortgagee*], of which sum [*mortgagor*]

(a) The above form is that given in the fourth schedule to the Law of Property Act, 1925: see sect. 117 of the Act.

Variations in the above form may be made, if required, for leasehold land or for giving effect to special arrangements; forms of statutory mortgages in which such variations occur will be found in some of the following precedents. The mortgagee, in the present case, will be in the same position as if the charge had been effected by a demise of freeholds or a sub-demise of leaseholds: see sect. 87 of the L. P. A. 1925.

A transfer of a statutory mortgage may be made by a deed in one of the forms set out in the fourth schedule to the Act expressed to be made by way of statutory transfer of mortgage (sect. 118), and a statutory mortgage may be surrendered or discharged by the special form of receipt given in the fourth schedule.

Apart from brevity, the statutory forms do not appear to present any special advantages.

Stamp.

(b) Stamp, *ad valorem* on amount secured. Throughout these mortgage precedents, where the stamp is stated to be "*ad valorem*," the higher rate of 2s. 6d. for every 100l. and also for every fractional part of 100l. is intended, unless any other rate is expressly mentioned: see Stamp Act, 1891, sched.: *tit.* "Mortgage," &c., *ante*, pp. 1—3.

Mortgage of
property of a
married
woman.

(c) If the mortgage is of property belonging to a woman married on or since the 1st of January, 1883, so as to be within the Married Women's Property Act, 1882, the mortgage will be expressed to be made as follows:—

"BETWEEN [*mortgagor*], the wife of [*husband*], of, &c., to whom she was married on the — day of —, 1885, of the one part, and [*mortgagee*], of, &c., of the other part."

If, however, the marriage took place before the 1st of January, 1883, but the property was acquired by her after that date, so as to be within the Act, the date of the marriage will not be stated, but recitals must be introduced showing at what date the property was acquired.

These remarks, of course, apply to mortgages in the ordinary form as well as to statutory mortgages. For a mortgage of property of a married woman where the Act does not apply, see *post*, Precedent XXI.

hereby acknowledges the receipt (*d*), the said [*mortgagor*], as mortgagor and as beneficial owner, hereby charges by way of legal mortgage ALL THAT, &c. [*parcels*], with the payment to the said [*mortgagee*] on the — day of —, 19— (*e*), of the principal sum of £—, as the mortgage money, with interest thereon at the rate of — per centum per annum.

I. STATUTORY
CHARGE BY
WAY OF
LEGAL
MORTGAGE.

IN WITNESS, &c.

II. MORTGAGE of FREEHOLDS to ONE MORTGAGEE.

COVENANT *by* MORTGAGOR to INSURE. PROVISIO *restricting* MORTGAGOR'S STATUTORY POWERS of LEASING.

THIS MORTGAGE (*f*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower" (*g*), which expression shall also include persons deriving title under him or entitled to redeem this security (*h*)), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender" (*i*)), of the other part (*j*), WITNESSETH as follows:—

Parties.

Testatum.

1. In consideration of the sum of £— now paid to the bor-

Covenant for
payment of
principal and
interest.

(*d*) As to the receipt for the consideration being mentioned in the body of the deed, see L. P. A. 1925, ss. 67, 68, 69; *Lloyds Bank v. Bullock*, [1896] 2 Ch. 192; *Bateman v. Hunt*, [1904] 2 K. B. 530. A solicitor lending money to a client cannot rely on such a receipt as evidence of the amount advanced by him: see *Lewes v. Morgan*, 5 Price, 42. As to transferees or sub-mortgagees, see *Bickerton v. Walker*, L. R. 31 Ch. D. 151; *Bateman v. Hunt*, [1904] 2 K. B. 530. As to receipts by trustees, see Trustee Act, 1925, s. 23.

(*e*) Generally six months after the date of the mortgage.

(*f*) Stamp, *ad valorem* on amount secured. The deed may be described as "This Mortgage": see sect. 57 of the L. P. A. 1925.

Stamp.

(*g*) To save the repetition of the names of the mortgagor and mortgagee, the mortgagor is referred to in this and many of the subsequent mortgage precedents as the "borrower," and the mortgagee as the "lender." These terms are less likely to lead to mistakes in copying than the words "mortgagor" and "mortgagee."

(*h*) See the definition contained in sect. 205, sub-sect. (1) (xvi), of the L. P. A. 1925: "'Mortgagor' includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property."

(*i*) See sect. 114 of the L. P. A. 1925, which renders it unnecessary expressly to extend the interpretation of the word "mortgagee" or "lender."

(*j*) If desired, recitals of the mortgagor's title and of the agreement for the loan may be here inserted as in Precedent XII., *post*, p. 35.

Recitals.

II. MORTGAGE
OF FREEHOLDS
TO ONE
MORTGAGEE.

Demise
of freehold
messuage and
lands to
mortgagee
for term of
3,000 years.
Habendum.

Proviso for
redemption.

Covenant for
payment of
interest.

power by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him, on the — day of — next, the sum of £—, with interest thereon in the meantime at the rate of — per cent. per annum; AND ALSO (*k*), so long after that day as any principal money shall remain due under this mortgage, to pay to the lender interest thereon at the same rate by equal half-yearly payments, on the — day of — and the — day of — in every year (*l*).

2. For the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender ALL THAT [*describe parcels*], To HOLD all the premises unto the lender, without impeachment of waste, for the term of three thousand years, to commence from the date hereof, subject to the proviso for redemption following.

3. PROVIDED that if the borrower shall on the — day of — next, pay (*m*) to the lender the sum of £— with interest thereon at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer (*n*) of the said premises unto the borrower or as he shall direct.

(*k*) A separate covenant for payment of interest enables the mortgagee to recover the interest without calling in the principal. Where a mortgage deed contained no covenant for payment of interest after the day fixed for payment if the principal should be then unpaid, it was held that interest after that day was recoverable only as damages at the rate of 5 per cent.: *Re Roberts*, 14 Ch. D. 49; *Mellersh v. Brown*, 45 Ch. D. 225.

(*l*) A mortgagor is entitled to deduct income tax from the interest: *Moss v. Galte*, 23 Beav. 269.

(*m*) Sect. 116 provides that "without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and cease." By sect. 5, a satisfied term, whether created out of freehold or leasehold land, will merge in the reversion expectant thereon and cease accordingly.

(*n*) Sub-sect. (4) of sect. 115 of the Act provides that "this section shall not affect the right of any person to require a re-assignment, surrender, release, or transfer to be executed in lieu of a receipt." It appears advisable to follow the words of the Act in the proviso for redemption.

4. The borrower hereby covenants with the lender to keep the said messuage or dwelling-house and all the buildings upon the premises insured against loss or damage by fire in the sum of £—— at the least [*or*, to the full value thereof], in the —— Insurance Office, or some other fire insurance office to be approved by the lender, and to pay all premiums or sums from time to time payable for keeping up such insurance on [*or*, within —— days after] the first day on which every such premium or sum shall become payable, and on demand to produce to him or them the policy or policies of such insurance, and the receipt for every premium or sum payable in respect thereof, and that on the refusal or failure of the borrower to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender at any time thereafter to effect under the statutory powers in that behalf an insurance of the said messuage or dwelling-house and buildings to an amount not exceeding the sum of £—— [*or*, to the full value thereof].

II. MORTGAGE
OF FREEHOLDS
TO ONE
MORTGAGEE.

Covenant by
mortgagors to
insure (o).

5. The borrower hereby covenants with the lender that during the continuance of this security no person or persons or corporation shall be registered under the Land Registration Act, 1925, or any Act amending or re-enacting the same, as proprietor or proprietors of the hereditaments hereby mortgaged, or any part thereof, without the consent in writing of the lender, and that the costs incurred by the lender in lodging from time to time a caution against such registration (*q*) shall be deemed to be costs properly incurred by him hereunder.

Covenant
against re-
gistration (*p*).

(*o*) All premiums paid by the mortgagee in effecting an insurance under the statutory power given by the L. P. A. 1925, s. 101 (ii), are a charge on the mortgaged property, with interest. If the statutory power is relied on, the mortgagee may have a difficulty, in the absence of a covenant by the mortgagor to produce the receipt for premiums, in ascertaining whether default in insuring has been made by the mortgagor, that being the event upon which the statutory power arises.

(*p*) If the land is registered this clause should not be used; but when the land is not registered it is expedient to insert it in order to protect the mortgagee against the inconvenience and delay which may arise on a sale in case the owner of the freehold interest becomes registered as proprietor.

(*q*) See Land Registration Act, 1925, s. 53.

II. MORTGAGE
OF FREEHOLDS
TO ONE
MORTGAGEE.

Proviso
restricting
mortgagor's
powers of
leasing.

Clause pre-
serving
mortgagee's
right of con-
solidation (r).

6. It is hereby agreed, that none of the powers of leasing or of agreeing to lease conferred by the Law of Property Act, 1925, on a mortgagor in possession, shall be exerciseable during the continuance of this security, by the borrower in respect of the premises, or any part thereof, without the written consent of the lender previously obtained.

7. It is hereby agreed, that the restriction contained in sect. 93 of the Law of Property Act, 1925, on the right of consolidating mortgage securities shall not apply to this security.

IN WITNESS, &c.

III. MORTGAGE of FREEHOLDS to SEVERAL MORTGAGEES
*advancing money on a JOINT ACCOUNT (s). PROVISOS
for REDUCTION of INTEREST on PUNCTUAL PAYMENT, and
that PRINCIPAL shall not be CALLED in for a CERTAIN
TIME. COVENANT by MORTGAGOR to INSURE. [PROVISO
as to COSTS of MORTGAGEE SOLICITOR in Note.]*

Parties.

THIS MORTGAGE (t), made the — day of —, 19—,
BETWEEN [mortgagor], of, &c. (hereinafter called "the bor-
rower," which expression shall include also persons deriving title
under him or entitled to redeem this security), of the one part,

(r) The clause is only required where there is a probability of there being several mortgage transactions between the parties.

(s) With reference to notice of trusts affecting mortgage debts, see sect. 113, sub-sect. (1), of the L. P. A. 1925, which provides that: "A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been wholly or partially discharged, released or postponed, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume, unless the contrary is expressly stated in the instruments relating to the mortgage—

"(a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and

"(b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof, or to deal with the same or the mortgaged property or any part thereof,

"without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto."

Stamp.

(t) Stamp, *ad valorem* on amount secured. But see note (f), *post*, p. 16, as to costs of solicitor mortgagee.

[*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part (*u*), WITNESSETH as follows:—

III. MORT-
GAGE OF
FREEHOLDS
TO SEVERAL
MORTGAGEES.

Testatum.

1. In consideration of the sum of £—— now paid to the borrower by the lenders out of money belonging to them on a joint account (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders to pay to the lenders, on the —— day of ——, 19——, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum; AND ALSO as long after that day as any principal money shall remain due under this mortgage, to pay to the lenders interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Covenant for
payment of
principal and
interest.

2. For the consideration aforesaid the borrower, as beneficial owner, doth hereby demise unto the lenders, ALL THAT messuage and farm-house, and farm, with the several cottages, buildings, closes, or pieces of land, and hereditaments thereto belonging, and held therewith, known as the —— Farm, situate in the parish of ——, in the county of ——, and containing by admeasurement —— acres, —— roods, —— perches, or thereabouts, particularly described in the schedule hereto, and delineated [for the purpose of identification only] on the plan drawn hereon, and therein coloured —— [such schedule and plan being respectively taken from the apportionment of tithe commutation rent-charge for the parish of —— aforesaid, and from the plan therein referred to, or such plan and the respective numbers of the fields shown thereon being copied from the ordnance survey map (—— edition) of the said parish of —— (*v*): To HOLD all the premises unto the lenders, without impeachment of waste, for the term of three thousand years, to commence from the date hereof, subject to the proviso for redemption following, namely,

Second
testatum.

Demise
to mortgagees
of freehold
farm by
reference to
schedule and
map.

3. If the borrower shall on the —— day of ——, 19——, pay

Proviso for
redemption.

(*u*) For recitals of mortgagor's seisin and agreement for loan, see next precedent.

(*v*) The ordnance map is usually more convenient for reference than the tithe map. As the ordnance map is not evidence of boundaries, it is advisable to add the words "for the purpose of identification only" after the word "delineated," as above. It is important to state the edition referred to, as the numbers of the fields sometimes vary in different editions.

III. MORT-
GAGE OF
FREEHOLDS
TO SEVERAL
MORTGAGEES.

to the lenders the sum of £—— and interest thereon at the rate aforesaid, then the lenders will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer (*w*) of the premises unto the borrower or as he shall direct.

Proviso for
reduction of
interest.

4. PROVIDED ALWAYS, that if the borrower shall on every —— day of —— and —— day of —— (*x*) so long as the said principal sum of £——, or any part thereof, shall remain unpaid, or within —— days after each of the said days respectively, pay to the lenders interest on the said principal sum or on such part thereof as shall for the time being remain unpaid, at the rate of —— [*the reduced rate*] per cent. per annum, then and in such case (*y*) the lenders shall accept interest for the said principal sum, or for such part thereof as shall for the time being remain unpaid, at the rate of —— [*the reduced rate*] per cent. per annum for every half-year for which such interest shall be paid to them within such days as aforesaid.

Proviso that
principal
shall not be
called in
before speci-
fied date.

5. PROVIDED ALSO that if the borrower shall on every —— day of —— and —— day of —— (*x*), or within —— days next after each of such days respectively, pay to the lenders interest on the said principal sum, or for such part thereof as shall for the time being remain unpaid, at the rate hereby provided, then and in such case the lenders shall not before the —— day of ——, 19——, call in the said principal sum, or any part thereof.

Proviso that
mortgagor
shall not
compel receipt
of principal
before that
date.

6. PROVIDED ALSO that the borrower shall not be entitled to require or compel the lenders to receive the said principal sum of £——, or any part thereof, before the said —— day of ——, 19——.

Proviso for
cesser of
foregoing
provisoes on

7. PROVIDED NEVERTHELESS that, notwithstanding anything herein contained, in case of the default or failure of the borrower to observe or perform any of the covenants herein contained, or implied, or any obligation imposed by statute or otherwise, and

(*w*) See sub-sect. (4) of sect. 115 of the L. P. A. 1925.

(*x*) The half-yearly days on which interest is made payable.

(*y*) In order to entitle a mortgagor to the benefit of a proviso for reduction of interest on punctual payment, he must strictly observe the conditions: *Davis v. Thomas*, 1 Russell & Mylne, 506.

on his part to be observed or performed, other than the covenant for payment on the — day of —, 19—, of the said sum of £—, and interest thereon, or in case the lenders shall enter into possession or receipt of the rents and profits of the premises, or any part thereof, then and in any such case the provisions herein contained for reduction of interest (*b*), and for the not calling in of the said principal sum, or any part thereof, before the said — day of —, 19—, shall cease and be of no effect.

8. The borrower hereby covenants with the lenders that he the borrower will, at his own cost, from time to time, so long as any money shall remain due under this mortgage, keep all buildings comprised therein [in good and substantial repair and also] insured (*d*) against loss or damage by fire, in the — Fire Office, or in some other insurance office to be approved in writing by the lenders in the aggregate sum of £— at the least; and will, from time to time, duly and punctually pay the premiums and moneys necessary for effecting and keeping up such insurance; and will, on demand, deliver to the lenders the policy or policies of such insurance, and the receipts for all such payments; AND THAT, in case default shall at any time be made in keeping [in repair as aforesaid or] insured the said buildings, or any of them, or in delivering the said policy or policies or the receipt for any such payment as aforesaid, then and in every such case it shall be lawful for the

III. MORT-
GAGE OF
FREEHOLDS
TO SEVERAL
MORTGAGEES.

breach of
mortgagor's
covenants,
&c. (*a*).

Covenant by
mortgagor to
repair and
insure (*c*).

(*a*) This proviso will be omitted altogether if there are no covenants, and if the statutory power of leasing is excluded; and will require obvious modification if there are no covenants, or if the power is excluded.

(*b*) A mortgagee in possession is entitled to charge the higher rate of interest, notwithstanding a proviso for reduction on punctual payment: *Union Bank of London v. Ingram*, 16 Ch. D. 53; *Cockburn v. Edwards*, 18 Ch. D. 449; *Bright v. Campbell*, 41 Ch. D. 388.

(*c*) For a more concise form of covenant to insure, relying on the statutory provisions as to insurance, see *ante*, p. 11; and see *ibid.* note (*o*), as to the statutory provisions. As to the application of the policy moneys in rebuilding at the request of any person interested in the property, see the Fire Prevention (Metropolis) Act, 1774, s. 83; and (as to this Act) *Westminster Fire Office v. Glasgow, &c. Society*, 13 App. Cas. 699, at p. 713; *Re Quicke's Trusts*, [1908] 1 Ch. 887; *Sinnott v. Bowden*, [1912] 2 Ch. 414. See also sect. 108 of the L. P. A. 1925.

(*d*) Add, if desired—

“in the joint names of the lenders and the borrower.”

III. MORT-
GAGE OF
FREEHOLDS
TO SEVERAL
MORTGAGEES.

Application
of insurance
moneys.

lenders [to enter upon the premises and effect any repair which they may think necessary or proper, or] to insure and keep insured all or any of the said messuage, cottage, and buildings, in any sum not exceeding £—— [as the case may require]; and that the borrower will, on demand, pay unto the lenders all such sums of money as they or any of them shall expend in or about such [repair or] insurance [as the case may be], with interest for the same at the rate aforesaid, as from the time of the same having been expended respectively; and that, until repayment, the same shall be a charge upon the premises (e): PROVIDED ALWAYS that, in case any loss or damage by fire shall happen to the said messuage or dwelling-house, buildings, and premises, all moneys which shall be received by virtue of any such policy of insurance as aforesaid, shall forthwith be applied in making good the damage or injury which shall have been sustained, or, in the discretion of the lenders, and if they shall so require, by notice in writing given to the borrower, or left on the premises hereby conveyed, within —— days after such loss or damage by fire shall have happened, shall be applied in or towards the discharge of the moneys for the time being due under this mortgage (f).

(e) See L. P. A. 1925, s. 101, sub-s. (1) (ii).

Proviso that
costs of
mortgagee
solicitor shall
be included
in the
security.

(f) Where one of the mortgagees is a solicitor, as is often the case where trust money is lent on mortgage, the following clause may be added here or at the end of the deed:—

“AND it is hereby agreed that the said [*solicitor mortgagee*] shall be entitled to make and receive for all business (whether of an ordinary or strictly professional nature or not) done by him or his firm in relation hereto, or to the premises hereby mortgaged, all such charges and emoluments as he would have been entitled to make and receive had he not been a mortgagee hereunder, and that until payment all moneys which shall become due in respect of such services as aforesaid, with interest thereon as from the time when the same shall respectively have become due shall be a charge upon the premises in like manner as the said principal sum of £—— and interest hereby secured.”

Extra stamp.

Where this clause is inserted an additional stamp should be impressed for an amount estimated to cover the probable amount of costs.

Before the Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25), a solicitor mortgagee could not, in the absence of express contract, charge profit costs (*Re Roberts*, 43 Ch. D. 52; *Re Wallis*, 25 Q. B. D. 176;

9. The borrower hereby covenants with the lenders that during the continuance of this security no person or persons or corporation shall be registered under the Land Registration Act, 1925, or any Act amending or re-enacting the same, as proprietor or proprietors of the hereditaments hereby mortgaged without the consent in writing of the lenders, and that the costs incurred by the lenders in lodging, from time to time, a caution against such registration shall be deemed to be costs properly incurred hereunder (g).

III. MORTGAGE OF FREEHOLDS TO SEVERAL MORTGAGEES.

Covenant against registration.

12. And for the consideration aforesaid the borrower hereby attorns and becomes tenant from year to year to the lenders of the

Attornment clause (h).

Eyre v. Wynn-Mackenzie, [1894] 1 Ch. 218; *Cheese v. Keen*, [1908] 1 Ch. 245; but the Act of 1895, by sects. 2, 3 and 4, enables solicitor mortgagees to make profit charges for business done in relation to the mortgage. As to the construction of the Act, see *Eyre v. Wynn-Mackenzie*, [1896] 1 Ch. 135, and *Day v. Kelland*, [1900] 2 Ch. 745.

(g) See *ante*, p. 11, note (q).

(h) This clause is sometimes inserted where the mortgagor is in occupation.

If a receiver is appointed at the time of the mortgage, the more convenient course is for the mortgagor to attorn to the receiver and not to the mortgagee, and that the attornment clause should be contained in the deed appointing the receiver. The rent should be a fair rent: *Ex parte Williams*, 7 Ch. D. 138; *Re Stockton Iron Furnace Co.*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725; *Ex parte Punnett*, 16 Ch. D. 226. Provided the rent be not in excess of the fair value of the premises, it may be in excess of the amount of the interest payable under the mortgage, and there is no objection to the rent being made to fluctuate according to the happening of certain events: *Ex parte Voisey*, 21 Ch. D. 442.

Attornment to receivers.

Neither an attornment clause (*Re Willis*, 21 Q. B. D. 384) nor a power of distress (*Re Roundwood Colliery Co.*, [1897] 1 Ch. 373, approving *Pulbrook v. Ashby*, 56 L. J. (Q. B.) 376) will enable a mortgagee to recover rent by distress; but an attornment clause will enable him to recover possession of the land by summary process under Order III. r. 6, and Order XIV. r. 1 of the R. S. C. (see *Kemp v. Lester*, [1896] 2 Q. B. 162), since the Acts do not make void the attornment clause except as a bill of sale: see *Mumford v. Collier*, 25 Q. B. D. 279. A form of a power of distress is given below, but having regard to the questions and difficulties arising under the Bills of Sale Acts, its use is not recommended.

"PROVIDED ALWAYS, and it is hereby agreed that in case any interest payable under this security shall fall into arrear by the space of — days after the days hereinbefore appointed for pay-

Power of distress.

III. MORT-
GAGE OF
FREEHOLDS
TO SEVERAL
MORTGAGEES.

premises hereby demised, or of so much and such part or parts thereof as are in the occupation of the borrower, at the yearly rent of £——, clear of all deductions, to be paid by equal half-yearly payments on the —— day of —— and —— day of —— in every year (i.e., *the days appointed for payment of interest*) during the continuance of this security, but not to be recoverable by distress: PROVIDED ALWAYS, that it shall be lawful for the lenders at any time, without any previous notice, to enter into and upon and take possession of the premises whereof the borrower has hereby attorned tenant, and to determine the tenancy created by the attornment aforesaid: [PROVIDED ALWAYS, that the rents received under or by virtue of such tenancy shall be applied in keeping down the interest which shall from time to time become due under this security, and the surplus thereof shall from time to time be applied, if the lenders shall so think fit, in or towards satisfaction of the principal moneys for the time being due under this security:] PROVIDED ALSO, that neither the receipt of such rents nor the creation of such tenancy, as aforesaid, shall render the lenders liable to account as mortgagees in possession (i).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

IV. EXPRESS Power of Sale *in* MORTGAGE of FREEHOLDS
to several MORTGAGEES, *advancing* MONEY on a JOINT
ACCOUNT.

Power of
sale (k).

IT IS HEREBY AGREED that if default shall be made in payment of the said principal sum of £—— and interest thereon,

ment thereof, then and so often as the same shall happen, it shall be lawful for the lenders to enter and distrain upon the premises hereby granted, or such part or parts thereof, as shall for the time being be in the occupation of the borrower, and the distress or distresses then and there made to take, and dispose of according to law, to the intent that thereby all interest so in arrear, and all costs and expenses of and incident to such distress may be fully paid and satisfied."

(i) As to attornments, see sect. 151 of the L. P. A. 1925.

(k) The statutory power of sale given to mortgagees by sect. 101 of

as aforesaid, on the said — day of —, 19—, then it shall be lawful for the lenders, without any further consent of the borrower, to sell the premises, or any part or parts thereof (*l*), either together or separately, and either by public auction or private contract, and subject to any stipulations as to title or evidence or commencement of title or otherwise, which the lenders shall deem proper, with full power to buy in or rescind or vary any contract for sale, and to resell without being responsible for any loss occasioned thereby; AND to execute and do all such assurances and things for effectuating any such sale, as they shall deem proper; [AND that upon any such sale, as aforesaid, by any person or persons who may not be seised of the legal estate in the premises sold, the person or persons in whom the legal estate in the same premises shall be vested shall execute and do all such assurances and things for carrying the sale into effect, as the person or persons by whom the sale shall be made shall direct] (*m*); PROVIDED ALWAYS, that the lenders shall not execute

IV. EXPRESS
POWER OF
SALE IN
MORTGAGE OF
FREEHOLDS.

Proviso that
the power

the L. P. A. 1925 (reproducing, with some additions, sect. 19 of the Conveyancing Act, 1881), seems to be fully sufficient in ordinary cases. A form of an express power of sale of freeholds, such as was formerly in common use, is here given, in case a mortgagee should prefer to have an express power, and also as it may be of assistance in framing special powers of sale under particular circumstances, and also in framing mortgages of lands in British colonies or dependencies, where powers of sale are not imported into mortgages by statute, or otherwise. It should be inserted immediately after the proviso for redemption.

(*l*) This power is applicable also in the case of leaseholds and personal chattels. If such chattels comprise policies of insurance, add here:—

“And as to the said policy or policies of insurances, either by way of surrender to the office or offices by which the same may have been granted, or otherwise.”

(*m*) This clause will no longer be applicable under the L. P. A. 1925, for by sect. 88 (1) of that Act: “Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

“(a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

“(b) the mortgage term or the charge by way of legal mortgage and

IV. EXPRESS
POWER OF
SALE IN
MORTGAGE OF
FREEHOLDS.

shall be
exercised only
in certain
events.

Purchasers
not to be
bound to
inquire
whether such
events have
happened,
&c. (n).

the power of sale hereinbefore contained, unless and until default shall have been made in payment, at the time hereinbefore appointed for payment thereof, of some principal money or interest, the payment whereof is intended to be hereby secured, and they shall have given a notice in writing to the borrower to pay off the moneys for the time being owing on the security of these presents, or shall have left a notice in writing to that effect, at or upon some part of the premises hereby conveyed, and default shall have been made in payment of the whole or part of such moneys for *six* calendar months from the time of giving or leaving such notice, or unless and until the whole or part of some half-yearly payment of interest, which shall become due on the security of these presents, shall have become in arrear for *three* calendar months; AND every such notice as aforesaid shall be sufficient, though not addressed to any person or persons by name or designation, and notwithstanding the person or any of the persons affected thereby may be unborn, unascertained, or under disability: PROVIDED ALSO, that upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause or provision lastly hereinbefore contained has happened,

any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;

"and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested."

And as to a mortgage of leaseholds under the Act of 1925, see the provisions of sect. 89 (1), giving the mortgagee power to convey to a purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the Court) the leasehold reversion affected by the mortgage.

Where, however, the L. P. A. 1925 does not apply (as in British colonies or dependencies not having a similar statutory provision), the following clause should be inserted (in a mortgage by demise) after the clause enclosed in brackets in the text:—

"And that after any such sale as aforesaid, the borrower shall stand possessed of the last — days of the said term upon trust for the purchaser or purchasers of the premises hereby demised, and to assign and dispose of the same as such purchaser or purchasers shall direct."

(n) Compare the protection given to a purchaser from a mortgagee by sect. 104 of the L. P. A. 1925.

or whether any default has been made in payment of any such principal money or interest as aforesaid, or whether any money remains owing on the security of these presents, or as to the necessity or expediency of the stipulations, subject to which such sale shall have been made, or otherwise as to the propriety or regularity of such sale; AND, notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards a purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly; AND the remedy (if any) of the borrower in respect of any breach of the clause or provision lastly hereinbefore contained, or of any impropriety or irregularity whatsoever in any such sale, shall be in damages only; AND it is hereby also agreed that upon any such sale as aforesaid the receipt of the lenders, for the purchase-moneys of the premises sold, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application, or being accountable for any loss or misapplication thereof; AND it is hereby further agreed that the lenders shall by and out of the moneys which shall arise from any such sale as aforesaid, in the first place, reimburse themselves, or pay all the expenses incurred in or about such sale, or otherwise in relation to the premises; AND, in the next place, apply such moneys in or towards satisfaction of the moneys for the time being owing on the security of these presents; AND then pay the surplus (if any) unto the borrower, or as he shall direct; AND it is hereby also agreed that the aforesaid power of sale may be exercised by any person or persons, who, for the time being, shall be entitled to receive and give a discharge for the moneys owing on the security of these presents: PROVIDED ALSO, that the lenders shall not be accountable for any involuntary losses which may happen in or about the exercise or execution of the aforesaid power and trusts, or any of them.

IN WITNESS, &c.

IV. EXPRESS
POWER OF
SALE IN
MORTGAGE OF
FREEHOLDS.

Receipts of
mortgagees to
be effectual
discharges.

Trusts of
proceeds of
sale.

V. MORTGAGE
OF FREEHOLDS
SUBJECT
TO PRIOR
CHARGE.

V. MORTGAGE of FREEHOLDS, *subject to* PRIOR
CHARGE (o). PROVISIO for REPAYMENT of PRINCIPAL by
INSTALMENTS.

Parties and
interpretation
clause.

Testatum.

Covenant for
payment of
principal and
interest.

Second
testatum.
Demise.

Subject to
prior charge.

THIS MORTGAGE (p), made the — day of —, 19—,
BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,”
which expression shall also include persons deriving title under
him or entitled to redeem this security), of the one part, and
[*mortgagee*], of, &c. (hereinafter called “the lender”), of the
other part, WITNESSETH as follows:—

1. In consideration of the sum of £— now paid to the bor-
rower by the lender (the receipt whereof is hereby acknowledged),
the borrower hereby covenants with the lender to pay to him, on
the — day of — next, the sum of £—, with interest thereon
in the meantime at the rate of — per cent. per annum; AND
ALSO, so long as any principal money remains due under this
mortgage, to pay to the lender interest thereon at the rate afore-
said, by equal half-yearly payments, on the — day of — and
the — day of — in every year.

2. For the consideration aforesaid, the borrower, as beneficial
owner, doth hereby demise unto the lender ALL THAT [*describe
parcels*], To HOLD the premises unto the lender for the term of
three thousand years and [one day] from the [date hereof (q);]
Subject, nevertheless (r), to an indenture of mortgage dated the

(o) This mortgage will require to be registered in accordance with
sect. 10 of the Land Charges Act, 1925, as “not being a mortgage pro-
tected by a deposit of documents relating to the legal estate affected.”
Otherwise, it will be void as against a purchaser of the land charged or
of any interest in such land: see sect. 13 (2) of the L. C. A. 1925.

(p) Stamp, *ad valorem* on amount secured.

(q) “A second or subsequent mortgagee shall take a term (com-
mencing from the date of the mortgage) one day longer than the term
vested in the first or other mortgagee whose security ranks immediately
before that of such second or subsequent mortgagee”: L. P. A.
1925, s. 85 (2) (b). The length of the term here granted must therefore
be determined by the length of the term ranking immediately prior
thereto.

(r) If there are several prior charges, say,
“Subject, nevertheless, to the several mortgages, charges, and
incumbrances specified in the schedule hereto, and to the several
sums and interest thereby secured respectively as appears by the
same schedule; AND ALSO subject,” &c.

Subject to
several prior
charges.

— day of —, 19—, and made between [*parties*], whereby the premises hereby demised were demised by the borrower to [*prior mortgagee*], of, &c., for the term of —, for securing the sum of £—, and interest thereon at the rate of — per cent. per annum as therein mentioned; AND ALSO subject to the proviso for redemption following, namely,

V. MORTGAGE
OF FREEHOLDS
SUBJECT TO
PRIOR
CHARGE.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of —, 19—, pay to the lender the sum of £—, and interest thereon at the rate of — per cent. per annum, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer (*s*) of the premises unto the borrower or as he shall direct (*t*).

Proviso for
redemption.

4. PROVIDED ALWAYS, that if the borrower shall pay to the lender the said sum of £— by the instalments and at the times following, that is to say, the sum of £— on the — day of —, 19—, and the further sum of £— on the — day of —, 19—, and a like sum on the — day of — of every succeeding year, or within — days after each of the said days, until the said sum of £— shall be fully paid, and shall also pay interest at the rate aforesaid on the said sum of £—, or on such instalments thereof as shall for the time being remain unpaid upon the half-yearly days hereinbefore appointed for payment of interest, or within — days after such days respectively, then and in such case the lender shall not call in or require payment of the said principal sum of £—, or any part thereof, except by such instalments as aforesaid (*u*).

Proviso for
repayment by
instalments.

5. [*Covenant against registration, see Precedent II., ante, p. 11.*]

IN WITNESS, &c.

(*s*) See sub-sect. (4) of sect. 115 of the L. P. A. 1925.

(*t*) Formerly where a mortgage in fee of freeholds was discharged by a reconveyance, such reconveyance was made subject to the prior mortgages, charges and incumbrances. Under the present system of mortgage by demise or sub-demise this is unnecessary, for the determination of the subsequent term cannot affect the subsistence of the prior term.

(*u*) Any special provisions or covenants with regard to mode of payment of principal or interest, or as to insurance or otherwise, may be inserted in this and other following precedents as required.

VI. CHARGE OF
FREEHOLDS
BY WAY OF
LEGAL
MORTGAGE.

VI. CHARGE of FREEHOLDS *by way of* LEGAL MORTGAGE.

Parties.

Recital of
mortgagor's
seisin;

of agreement
for loan.

Testatum.

Covenant for
payment of
principal and
interest.

Second
testatum.

THIS LEGAL CHARGE is made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS the borrower is seised for an estate in fee simple in possession free from incumbrances of the hereditaments mentioned in the schedule hereto; AND WHEREAS the lender has agreed with the borrower to lend to him the sum of £— upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing: Now in consideration of the sum of £— now paid by the lender to the borrower (the receipt of which sum the borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

1. The borrower hereby covenants with the lender to pay to him on the — day of — next the sum of £—, with interest thereon in the meantime at the rate of — per cent. per annum; AND ALSO so long as any principal money remains due under this mortgage to pay to the lender interest thereon at the rate aforesaid by equal half-yearly payments, on the — day of — and the — day of — in every year.

2. The borrower, as beneficial owner, hereby charges by way of legal mortgage ALL AND SINGULAR the hereditaments mentioned in the schedule hereto with the payment to the lender of the principal money, interest, and other money hereby covenanted to be paid by the borrower.

3. [*Add covenant to insure buildings, and any other provisions desired.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Particulars of the land, buildings, &c. comprised in the mortgage*] (x).

(x) The above form is founded upon the form given in the fifth schedule to the L. P. A. 1925. The lender will be in the same position as if a mortgage had been effected by a demise of the freeholds for a mortgage term of three thousand years without impeachment of waste: see sect. 87 of the Act. The form given in the fifth schedule to the Act is applicable to freeholds or leaseholds, or to both.

VII. FURTHER CHARGE *by way of* LEGAL MORTGAGE.

VII. FURTHER
CHARGE
BY WAY OF
LEGAL
MORTGAGE.

THIS FURTHER CHARGE, made the — day of —, 19—, BETWEEN, &c. [*same parties as foregoing legal charge*], supplemental to a legal charge (hereinafter called “the principal deed”), dated, &c., and made between the same parties as are parties hereto, and in the same order for securing the sum of £— and interest at — per cent. per annum on freehold land at, &c., WITNESSETH as follows:—

1. In consideration of the further sum of £— now paid to the said [*borrower*] by the said [*lender*] [*add receipt and covenant to pay the further advance and interest*].

2. For the consideration aforesaid the said [*borrower*], as beneficial owner, hereby charges by way of legal mortgage the premises comprised in the principal deed with the payment to the said [*lender*] of the principal money and interest hereinbefore covenanted to be paid as well as the principal money, interest, and other money secured by the principal deed.

IN WITNESS, &c. (*y*).

VIII. MORTGAGE *of* LEASEHOLDS *to one* MORTGAGEE.

THIS MORTGAGE (*z*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall also include persons deriving title under him or entitled to redeem this security), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part: WHEREAS, by an indenture of lease, dated, &c., and made between [*parties*], ALL THAT [*describe parcels fully from the lease*] was demised to the said [*lessee*], his executors, administrators, and assigns, for the term of — years, at the yearly rent of £—, and subject to the covenants on the lessee’s part and conditions therein contained, which said leasehold premises, by virtue of certain mesne assignments and acts in the law, and ultimately by an indenture of assignment, dated, &c.,

Parties.

Recital of
lease.

(*y*) See Form No. 2 in the fifth schedule to the L. P. A. 1925.

(*z*) Stamp, *ad valorem* on amount secured.

VIII. MORT-
GAGE OF
LEASEHOLDS
TO ONE
MORTGAGEE.

Of agreement
for loan.

Testatum.

Second
testatum.
Parcels.

Habendum.

Proviso for
redemp-
tion (c).

Declaration
of trust of
nominal
reversion.

and made between [*parties*], have become and are now vested in the borrower for all the residue of the said term: AND WHEREAS the lender has agreed to lend to the borrower the sum of £—, upon having the repayment thereof, with interest after the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £— now paid to the borrower by the lender (the receipt of which sum the borrower hereby acknowledges), he the borrower hereby covenants [*Covenant by mortgagor for payment of principal and interest, ante, p. 9*].

2. For the consideration aforesaid, he the borrower, as beneficial owner (*a*), hereby demises unto the lender, ALL THAT the said [messuage or tenement] hereinbefore described, and all other the premises (if any) comprised in the hereinbefore recited indenture of lease: To HOLD all the premises unto the lender henceforth for all the residue now unexpired of the said term of — years, except the last day thereof (*b*).

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lender the sum of £—, with interest thereon at the rate of — per cent. per annum, computed from the date hereof, the lender will forthwith execute a receipt for the same in accordance with the provisions of section 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the

(*a*) As to the covenants implied by these words, see L. P. A. 1925, s. 76 (1) (D), and Part IV. of the second schedule.

(*b*) The declaration of trust of the nominal reversion and power of attorney to assign the reversion commonly inserted in mortgages by sub-demise prior to 1926 are now no longer required, in view of the powers conferred on the lender by sect. 89 of the L. P. A. 1925, under which a conveyance by him in exercise of his statutory or express power of sale will operate to convey to the purchaser the leasehold reversion as well as the mortgage term, subject, however, to any legal mortgages having priority to his own mortgage. Such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner.

(*c*) Although sect. 115 provides for the reconveyance of a mortgage and discharge of the mortgaged property by means of an endorsed receipt, this section does not affect the right of any person to require a re-assignment, surrender, release, or transfer to be executed in lieu of a receipt: see sub-sect. (4).

borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release or transfer (*d*) of the premises unto the borrower or as he shall direct (*e*).

VIII. MORT-
GAGE OF
LEASEHOLDS
TO ONE
MORTGAGEE.

4. AND the borrower hereby covenants with the lender to keep the said messuage and premises at all times during the continuance of this security in good and substantial repair, and insured against loss or damage by fire in accordance with the covenants of the said lease, and on demand to produce to the lender, or his assigns, the policy of such insurance, and the receipt for every premium payable in respect thereof (*f*).

Covenant for
repair and
insurance.

IN WITNESS, &c.

IX. CHARGE *by way of* LEGAL MORTGAGE of LEASEHOLDS.

THIS LEGAL CHARGE (*g*) is made, &c., BETWEEN [*mort-* Parties.
gagor], of, &c. (hereinafter called "the borrower"), of the one
part, and [*mortgagee*], of, &c. (hereinafter called "the lender"),
of the other part: WHEREAS, by indenture of lease dated, &c., and
made between [*parties*], the said [*lessor*] demised unto the borrower Recitals:
[*describe parcels*]: To HOLD the same unto the borrower from the
— day of — then next, for the term of — years, at the rent,
and subject to the covenants on the part of the lessee to be per-
formed, and conditions therein contained; AND WHEREAS, by
another indenture of lease, dated, &c. [*recite, as before, lease of*
other property intended to be comprised in the mortgage (h)];

of leases:

(*d*) See sub-sect. (4) of sect. 115 of the L. P. A. 1925.

(*e*) Insert here, if desired, proviso for reduction of interest on punctual payment (*ante*, p. 14), or any other stipulations with reference to the mode of payment of the moneys secured by the mortgage, for which see Index to Precedents.

(*f*) For fuller form of covenant to insure, see next precedent. Add here any clauses excluding the application of statutory provisions or other special stipulations with regard to the mortgaged property.

(*g*) Stamp, *ad valorem* on amount secured.

Stamp.

(*h*) If the leases were not granted to the mortgagor, but passed through the hands of intermediate owners, recite leases accordingly, and add—

"AND WHEREAS the premises comprised in the said several indentures of lease have, by virtue of certain mesne assignments or acts

Reference to
mesne assign-
ments.

IX. LEGAL
MORTGAGE OF
LEASEHOLDS.

of agreement
for loan.

First
testatum.

Covenant for
payment of
principal and
interest.

Second
testatum.

Charge by
way of legal
mortgage.

Covenant by
mortgagor
to keep
mortgaged
premises
insured
against fire
(i).

AND WHEREAS the lender has, at the request of the borrower, agreed to lend to him the sum of £——, on having the repayment thereof with interest secured in manner hereinafter appearing:

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*Covenant by mortgagor for payment of principal and interest, ante, p. 9*].

2. For the consideration aforesaid, he the borrower, as beneficial owner, hereby charges by way of legal mortgage, ALL THOSE the said several pieces or parcels of ground, messuages, and premises in the said indentures of lease described, and thereby demised respectively, with the payment to the lender of the principal money, interest, and other money hereby covenanted to be paid by the borrower.

3. AND the borrower hereby covenants with the lender, at all times during the continuance of this security, to keep the several messuages and buildings respectively erected and being on the premises hereby charged insured against loss or damage by fire, in the aggregate sum of £—— at the least, in the — Insurance Office, or in some other fire insurance office, to be approved by the lender, his executors, administrators, or assigns [*or, in accordance with the covenants of the respective indentures of lease under which the same are respectively held*], and from time to time duly and punctually to pay all premiums and moneys necessary for effecting and keeping up such insurances respectively, and on demand to produce to the lender, his executors, administrators, or assigns, all the policies of such insurances as aforesaid, or any of them, and the receipts for all premiums and payments in respect thereof respectively, or any of them [*or other proper and sufficient evidence of the subsistence of such policies*]; AND that

in the law, become absolutely vested in the borrower for all the residue of the said terms of — years and — years respectively, at the rents, and subject to the lessee's covenants and conditions reserved by and contained in the said indentures of lease respectively."

(i) For a fuller form of covenant not relying on the statutory provisions, see *ante*, Precedent III. p. 15.

in case of the refusal or failure of the borrower, his executors, administrators, or assigns, to produce any such policies or policy or receipts or receipt [or such other evidence] as aforesaid, in pursuance of the covenant in that behalf hereinbefore contained, it shall be presumed that the insurances or insurance to which such policies or policy or receipts or receipt, if effected or given, would relate, are or is not being kept up by or on behalf of the mortgagor in accordance with this mortgage; AND it shall be lawful for the lender, his executors, administrators, or assigns, at any time thereafter, to effect, under the statutory power in that behalf, insurances or an insurance of the premises in respect of which no such policies or policy or receipts or receipt (as the case may be) shall be produced, to an amount not exceeding £——.

IX. LEGAL
MORTGAGE OF
LEASEHOLDS.

5. The borrower for himself and his assigns hereby covenants with the lender that during the continuance of this security no person or persons or corporation shall be registered under the Land Registration Act, 1925, or any Act amending or re-enacting the same, as proprietor or proprietors of the leasehold property hereby mortgaged, or any part thereof, without the consent in writing of the lender, and that the costs incurred by the lender in lodging from time to time a caution against such registration (*l*), and after the power of sale shall have become exerciseable in registering the lender as proprietor under the said Act of the leasehold property hereby mortgaged, shall be deemed to be costs properly incurred by the lender under these presents.

Covenant
against regis-
tration (*l*).

IN WITNESS, &c.

X. MORTGAGE *by DEMISE of LEASEHOLDS originally held under a PERPETUALLY RENEWABLE LEASE* (*m*).

THIS MORTGAGE (*n*), made the —— day of ——, 19——,
BETWEEN [*mortgagor*], of, &c. (hereinafter called “the bor-

Parties.
Recitals:
of lease;

(*k*) See *ante*, p. 11, note (*p*).

(*l*) See sect. 53 of the L. R. A. 1925.

(*m*) By the fifteenth schedule to the L. P. A. 1922 (incorporated by sect. 145 of that Act), it is provided as follows:—

“(1) Land comprised in a perpetually renewable lease which was sub-

(*n*) Stamp, *ad valorem* on amount secured.

Stamp.

X. MORTGAGE
OF
(CONVERTED)
RENEWABLE
LEASEHOLDS.

power," which expression shall also include persons deriving title under him or entitled to redeem this security), of the one part,

sisting at the commencement of this Act shall, by virtue of this Act, vest in the person who at such commencement was entitled to such lease, for a term of two thousand years, to be calculated from the date at which the existing term or interest commenced, at the rent and subject to the lessee's covenants and conditions (if any) which under the lease would have been payable or enforceable during the subsistence of such term or interest:

"(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by this Act; and that term shall take effect in substitution for the term or interest created by the lease, but without any right of renewal."

By paragraph 10 (1), every lease which thus takes effect for a term of two thousand years shall be deemed to contain (*inter alia*) (a) a covenant by the lessee to register every assignment or devolution of the term with the lessor or his solicitor or agent, within six months from the date of the assignment, devolution or grant of probate or letters of administration, and to pay a fee of one guinea in respect of each registration; (b) a covenant by the lessee within one year from the commencement of the Act to produce his lease for endorsement, and such endorsement signed by or on behalf of the lessor shall, in favour of a purchaser, be sufficient evidence that the right of renewal was subsisting, and the power of re-entry (if any) contained in the lease shall apply and extend to the breach of every covenant deemed to be contained as aforesaid.

Paragraph 12 provides for the conversion of fines (payable by the lessee on renewal) into additional rent, which, unless commuted, becomes payable to the lessor during the subsistence of the term, and (by subpara. 4) "the additional rent shall be deemed part of the rent reserved by the lease or underlease for all purposes, including any covenant for payment of rent or proviso for re-entry contained in the lease or underlease."

By paragraph 14 (1), the lessor and lessee or underlessee may agree (*inter alia*)—

- (a) for the commutation or discharge of any claims in respect of additional rent or any part thereof;
- (b) the amount (if any) of the annual instalments of additional rent payable;
- (c) the dates for payment of additional rent.

(2) A statement in writing respecting any such agreement which is endorsed on any such lease or underlease, or the counterpart or assignment, and signed by the lessor and lessee or underlessee, shall be conclusive evidence of the matters stated, and the costs of and incidental to

The words
in italics were
inserted by
the amending
Act of 1924.

and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS by an indenture of lease, dated, &c., and made between the governors and guardians of the — Hospital, of the first part, [A. B.], of the second part, and the said [*mortgagor*], of the third part, it was witnessed that, for the considerations therein expressed, the said governors and guardians (by the direction of the said [A. B.]), demised unto the borrower, his executors, administrators, and assigns [*describe the parcels*], To HOLD the premises from the — day of — for the term of ninety-nine years, at the rent of a peppercorn for the first three years, and for the remainder of the term (save the last half-year), at the yearly rent of £—, payable quarterly without any deduction, and for the last half-year at the rent of £—, and subject to the several covenants and agreements on the lessee's part in the indenture now in recital contained; AND WHEREAS the said indenture of lease contained a covenant or proviso conferring upon the lessee a perpetual right of renewal of the said lease upon the terms therein mentioned, which said right of renewal was subsisting at the commencement of the Law of Property Act, 1922, as appears by a notice to that effect endorsed on the said indenture, and signed by the solicitor to the lessors and on their behalf in accordance with the provisions of the said Act; AND WHEREAS, by virtue of the Law of Property Act, 1922, the premises comprised in the said lease are now vested in the borrower for a term of two thousand years from the said — day of — [*date of commencement of original lease*], at a further yearly rent of £—, payable in addition to and at the same times as the original rent reserved by the said lease [*or, if such be the case, say, "all additional rent arising under the said Act having now been discharged as appears from the statement endorsed on the said lease"*]; AND WHEREAS the lender has agreed to lend to the borrower the sum of £— upon having the repayment thereof with interest secured in manner

X. MORTGAGE
OF
(CONVERTED)
RENEWABLE
LEASEHOLDS.

of agreement
for loan.

Testatum.

the agreement and any negotiations therefor shall be borne by the lessee or underlessee.

(3) The additional rent may, by such endorsement, be made payable by instalments at the times at which the original rent is made payable or otherwise.

X. MORTGAGE
OF
(CONVERTED)
RENEWABLE
LEASEHOLDS.

Covenant for
payment of
principal and
interest.

Second
testatum.
Demise.

Proviso for
redemption.

Covenant to
insure.

hereinafter expressed: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest, ante, p. 9*].

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender ALL and singular the said piece or parcel of ground, messuages, and premises comprised in and demised by the hereinbefore recited indenture of lease, To HOLD the premises unto the lender for all the unexpired residue (*p*) of the said term of two thousand years, except the last ten days thereof, subject to the proviso for redemption following.

3. PROVIDED ALWAYS, that if the borrower shall, on the —— day of ——, 19——, pay to the lender the sum of £——, with interest for the same in the meantime, after the rate of —— per cent. per annum, without any deduction, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer (*q*) of the premises unto the borrower or as he shall direct.

4. AND the borrower hereby covenants with the lender as follows:—

(1) That the borrower will, &c. [*covenant to insure against fire, ante, p. 15 or p. 28*].

2. [*Covenant against registration, see Precedent II., clause 5, ante, p. 11.*]

3. [*Restriction as to leasing powers, ante, p. 12.*]

IN WITNESS, &c.

(*p*) It is convenient to make the first mortgage term ten days less than the term vested in the mortgagor, to provide for the possible creation of subsequent mortgage terms: see sect. 86, sub-sect. (2) of the L. P. A. 1925.

(*q*) See sub-sect. (4) of sect. 115 of the L. P. A. 1925.

XI. MORTGAGE of FREEHOLDS and ENFRANCHISED COPYHOLDS. PROVISO giving MORTGAGEE RIGHT of CONSOLIDATION.

XI. MORTGAGE
OF FREE-
HOLDS AND
ENFRANCHISED
COPYHOLDS.

THIS MORTGAGE (*r*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall also include persons deriving title under him or entitled to redeem this security), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part, WITNESSETH as follows:—

Parties.

Testatum.

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest, ante, p. 9*].

Covenant to
pay principal
and interest.

2. For the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender, ALL AND SINGULAR the property (*s*) mentioned in the first and second schedules hereto, To HOLD unto the lender for the term of 3,000 years, without impeachment of waste, to commence from the date hereof, subject to the proviso hereinafter contained (that is to say): PROVIDED ALWAYS that on payment on the said — day of — next, by the borrower to the lender of the sum of £—— with interest thereon in the meantime at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises unto the borrower or as he shall direct.

Second
testatum :
Demise.

3. AND the borrower hereby covenants with the lender that he, the borrower, will at all times during the continuance of this security duly pay all fines, reliefs, heriots, rents and fees payable in respect of the property mentioned in the second schedule hereto (being enfranchised land of the manor of —), or any transaction affecting such property, and will within six months from the date hereof produce this deed to the steward of the said manor

(*r*) Stamp, *ad valorem* on amount secured.

Stamp.

(*s*) “Property” includes any thing in action, and any interest in real or personal property. (L. P. A. 1925, s. 205 (xx). See also Form No. 1 in the fifth schedule to the Act.)

XI. MORTGAGE
OF FREE-
HOLDS AND
ENFRANCHISED
COPYHOLDS.

and procure the endorsement hereon of a certificate in accordance with the requirements of sect. 129 of the Law of Property Act, 1922 (*t*).

4. PROVIDED ALWAYS, and it is hereby agreed that the 93rd section of the Law of Property Act, 1925, shall not apply to these presents or to the security intended to be hereby made.

5. [*Covenant against registration, see ante, p. 11, clause 5.*]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[*Particulars of freehold land not subject to manorial incidents.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[*Particulars of enfranchised land subject for the time being to manorial incidents.*]

(*t*) See sect. 129 of the L. P. A. 1922, and also sect. 130 of the same Act, sub-sects. (2) and (3) of which provide as follows:—

“(2) Where any enfranchised land is alienated, whether by way of sale, lease, mortgage or otherwise, and such alienation without the licence of the lord would have given rise to a right to forfeit if this Part of this Act had not been passed, then, so long as the manorial incidents saved by this Part of this Act remain unextinguished, the like fine shall be payable in respect of the alienation as would have been payable for a licence authorising the alienation:

“Provided that, where the fine payable for such a licence is not fixed by the custom of the manor, the fine payable shall be such reasonable fine as in default of agreement between the lord and tenant may be fixed on the application either of the lord or the tenant by the Minister.

“(3) Subject to the provisions of sub-sect. (2) of this section, no fine shall be payable in respect of a mortgage of enfranchised land unless and until the mortgagee, in exercise of any power of sale express or implied conferred by the mortgage, conveys the land to a purchaser, or transfers the mortgage without the concurrence of the mortgagor, or the right of redemption is extinguished by foreclosure or otherwise.”

XII. MORTGAGE *of an ESTATE comprising* FREEHOLDS, ENFRANCHISED COPYHOLDS, *and* LEASEHOLDS *held under several LEASES. COVENANT by* MORTGAGOR *for* INSURANCE. VARIATION *where* OBLIGATION *to* INSURE *is* EXCLUDED. PROVISIO (1) EXTENDING *or* (2) LIMITING STATUTORY POWER *of* SALE.

XII.
MORTGAGE OF
ESTATE
COMPRISING
FREEHOLDS,
ENFRANCHISED
COPYHOLDS,
AND
LEASEHOLDS.

THIS MORTGAGE (*u*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall also include persons deriving title under him or entitled to redeem this security), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part: WHEREAS the borrower is seised of or entitled to the several manors, lands, and hereditaments, particularly described in the first and second schedules hereto, in fee simple in possession, subject as to the lands and hereditaments described in the said second schedule to certain manorial incidents according to the customs of the several manors mentioned in the same schedule, whereof such last-mentioned lands and hereditaments were respectively held prior to enfranchisement, and is also possessed of or entitled to the several messuages and lands particularly described in the third schedule hereto, for the residue of the several terms therein respectively granted by the several leases, which, and the mesne assignments whereof respectively are also mentioned in such last-mentioned schedule, and are therein set opposite to the premises to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively; AND WHEREAS the lender has agreed to lend to the borrower the sum of £— upon having the repayment of the same, with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH as follows:—

Parties.
Recitals:
of mort-
gagor's title;

of agreement
for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £— this day paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*Covenant for payment of principal and interest, ante, p. 9*].

Covenant for
payment of
principal and
interest.

(*u*) Stamp, *ad valorem* on amount secured.

Stamp.

XII.
MORTGAGE OF
ESTATE
COMPRISING
FREEHOLDS,
ENFRANCHISED
COPYHOLDS,
AND
LEASEHOLDS.

Second
testatum.
Demise of
freeholds.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender, ALL THAT and those the mansion house called — Hall, with gardens, pleasure grounds, and park thereto belonging, and the several manors, messuages, or dwelling-houses, lands, and hereditaments situate in the parishes of — and — in the county of —, and particularly described in the first and second schedules hereto, and delineated with the abutments in the plan drawn on these presents and therein coloured respectively [red] and [green], To HOLD the premises hereby demised unto the lender, without impeachment of waste, for the term of three thousand years, to commence from the date hereof, subject to the proviso for redemption hereinafter contained.

Third
testatum.
Covenant as to
enfranchised
land.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby covenants with the lender that he the borrower will at all times during the continuance of this security duly pay all fines, reliefs, heriots, rents, and fees payable in respect of the lands and hereditaments described in the second schedule hereto, or any transaction affecting such lands and hereditaments or any of them, and will within six months from the date hereof produce this deed to the stewards of the respective manors whereof such lands and hereditaments were respectively held prior to enfranchisement, and procure the endorsement hereon of certificates in accordance with the requirements of sect. 129 of the Law of Property Act, 1922.

Fourth
testatum.
Demise of
leaseholds.

4. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender, ALL THOSE the several messuages and pieces or parcels of land and premises situate in the parishes of — and — aforesaid particularly described in the third schedule hereto, and delineated with the abutments in the said plan and therein coloured [blue]; To HOLD the premises hereby demised unto the lender for the respective residues of the several terms therein respectively granted as aforesaid, except the last day of each such term. Subject to the proviso for redemption hereinafter contained.

Proviso for
redemption.

5. PROVIDED ALWAYS, that if the borrower shall on the — day of — next, pay to the lender the sum of £—, and interest thereon at the rate aforesaid, then the lender will forthwith

execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the said premises, or any of them, unto the borrower or as he shall direct.

XII.
MORTGAGE OF
ESTATE
COMPRISING
FREEHOLDS,
ENFRANCHISED
COPYHOLDS,
AND
LEASEHOLDS.

6. AND the borrower hereby covenants with the lender, at all times during the continuance of this security, to keep the several messuages and buildings erected and being on the freehold premises described in the first and second schedules hereto, insured against loss or damage by fire, in the aggregate sum of £—— at the least, in the — Insurance Office, or in some other fire insurance office, to be approved by the lender, and to keep the messuage and buildings erected and being upon the said leasehold premises hereby demised insured against loss or damage by fire in accordance with the respective covenants of the said several indentures of lease mentioned in the third schedule hereto, and from time to time duly and punctually to pay all premiums and moneys necessary for effecting and keeping up such insurances respectively, and on demand to produce to the lender all the policies of such insurances as aforesaid, or any of them, and the receipts for all premiums and payments in respect thereof respectively, or any of them [or other proper and sufficient evidence of the subsistence of such policies (y)]; AND that in case of the refusal or failure of the borrower to produce any such policies or policy or receipts or receipt [or such other evidence] as aforesaid, in pursuance of the covenant in that behalf hereinbefore contained, it shall be presumed that the insurances or insurance to which such policies or policy or receipts or receipt, if effected or given, would relate, are or is not being kept up by or on behalf of the borrower in accord-

Covenant by
mortgagor to
keep mort-
gaged pre-
mises insured
against fire
(x).

(x) Where it is not intended that the mortgagor shall insure the premises, the following may be substituted for clause 6:—

“PROVIDED ALWAYS, and it is hereby declared, that no obligation shall be deemed to be imposed under or by virtue of these presents upon the borrower to effect any insurance of any part of the premises herein comprised.”

No insurance
required.

(y) The policies, &c. as to the leaseholds may be required to be delivered to the lessor.

XII.
MORTGAGE OF
ESTATE
COMPRISING
FREEHOLDS,
ENFRANCHISED
COPYHOLDS,
AND
LEASEHOLDS.

ance with this mortgage; and it shall be lawful for the lender, at any time thereafter, to effect, under the statutory power in that behalf, insurances or an insurance of the premises in respect of which no such policies or policy or receipts or receipt (as the case may be) shall be produced, to the amounts following, that is to say, as to the said messuages and buildings erected and being on, &c., to an aggregate amount not exceeding £—, and as to the said messuage and buildings erected and being on, &c., to an amount not exceeding £—.

7. [*Covenant against registration as in Precedent II., ante, p. 11, saying, "Freehold and leasehold hereditaments," instead of "Leasehold hereditaments."*]

Limitation
of statutory
power of sale.

8. PROVIDED ALSO, and it is hereby agreed, that the lender shall not exercise the power of sale conferred on mortgagees by the Law of Property Act, 1925, unless and until a notice shall have been served in accordance with the 103rd section of the said Act, and default shall have been made in payment of the mortgage money, or of part thereof, for [*six*] calendar months after such service, or unless and until some interest under this security shall have become in arrear and unpaid for [*three*] calendar months after the same shall have become due (*z*) [*insert any other restriction on the exercise of the power of sale which may be agreed upon*]: PROVIDED ALWAYS, that except as is otherwise hereinbefore provided, all the provisions of the Law of Property Act, 1925, with reference to sale by mortgagees, shall, as regards the protection of purchasers, or otherwise howsoever, remain in full force and be exerciseable or available by the lender (*a*).

(*z*) Under the statutory power (L. P. A. 1925, s. 103, re-enacting sect. 20 of the O. A. 1881) the mortgagee cannot sell until default has been made in payment of principal after three months' notice, or interest is in arrear for two months.

(*a*) If instead of limiting the statutory power of sale it is desired to extend it, the following stringent provision may be used; but it should not be inserted without preserving evidence that the mortgagor's attention was specially called thereto, and that he assented to it (*Craddock v. Rogers*, W. N. (1885) p. 134):—

"PROVIDED ALWAYS, that if default shall be made in payment of the said principal sum of £—, and interest thereon as aforesaid, on the — day of —, 19—, then it shall be lawful for the

9. PROVIDED ALWAYS, that the powers of leasing conferred on mortgagors and mortgagees while in possession respectively by sect. 99 of the Law of Property Act, 1925, shall be varied and extended as follows, that is to say, [*Specify the variations agreed upon*] (b).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

XII.
MORTGAGE OF
ESTATE
COMPRISING
FREEHOLDS,
ENFRANCHISED
COPYHOLDS,
AND
LEASEHOLDS.

Variation of
statutory
leasing
powers.

lender, at any time thereafter, to exercise the power of sale conferred on mortgagees by the Law of Property Act, 1925, without any restriction as to notice or otherwise, it being the express intention of the parties hereto that the 103rd section of that Act shall not apply to these presents or to the security intended to be hereby made."

(b) See sub-sect. (14) of sect. 103 of the L. P. A. 1925:—"The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

"Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement."

XIII.
MORTGAGE
TO SECURE
LOAN AND
FUTURE
ADVANCES.

XIII. MORTGAGE *to secure a PRESENT LOAN and FUTURE ADVANCES (c).*

Parties.

THIS MORTGAGE (*d*), dated the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall include also persons deriving title under him or entitled to redeem this security), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part, WITNESSETH as follows:—

Testatum.

Covenant for
repayment of

1. In consideration of the sum of £— now paid to the borrower by the lender (the receipt whereof is hereby acknow-

(c) See sect. 94 of the L. P. A. 1925, which provides as follows:—

“(1) After the commencement of this Act a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

“(a) if an arrangement has been made to that effect with the subsequent mortgagees; or

“(b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

“(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.”

“This sub-section applies whether or not the prior mortgage was made expressly for securing further advances.

“(2) In relation to the making of further advances after the commencement of this Act, a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance, or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

“This sub-section only applies where the prior mortgage was made expressly for securing a current account or other further advances.

“(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished.

“Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrancer, or by arrangement with the subsequent incumbrancer.

“(4) This section applies to mortgages of land made before or after the commencement of this Act, but not to charges registered under the Land Registration Act, 1925, or any enactment replaced by that Act.”

Stamp.

(*d*) A stamp will be required of sufficient value to cover the *ad valorem* duty of the present loan, and the probable amount of the future advances: see Stamp Act, 1891, s. 88; *Suffield v. I. R. Commrs.*, [1908] 1 K. B. 865.

ledged), the borrower hereby covenants with the lender to pay to him, on the — day of —, the sum of £—, with interest thereon in the meantime at the rate of — per centum per annum; AND also on such — day of — or — day of — as shall first happen after every further sum of money shall be paid or advanced to the borrower or become owing by him to the lender on the security of these presents to pay the same with interest thereon at the rate aforesaid as from the time or respective times of the same being so paid and advanced or becoming owing as aforesaid; AND also so long as the said sum of £—, or any sum or sums so paid and advanced or becoming owing as aforesaid, or any part thereof respectively, shall remain due under this security after the days hereinbefore appointed for payment thereof respectively, to pay to the lender interest thereon, at the rate aforesaid, by equal half-yearly payments, on the — day of — and the — day of — in every year.

XIII.
MORTGAGE
TO SECURE
LOAN AND
FUTURE
ADVANCES.

present
loan and
future
advances,
and interest.

2. For the consideration aforesaid, the borrower, as beneficial owner, doth hereby demise unto the lender, ALL THAT [*describe parcels*]; To HOLD all the premises unto the lender, without impeachment of waste, for the term of three thousand years, to commence from the date hereof, subject to the proviso for redemption hereinafter contained.

Second
testatum.
Demise.
Habendum.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of —, 19—, pay to the lender the said sum of £—, with interest thereon in the meantime at the rate aforesaid, and shall also, on such — day of — or — day of — as shall first happen after any further sum shall be so paid or advanced or become owing as aforesaid, pay the same to him, with interest thereon at the rate aforesaid as from the time or times of such sum being so paid or advanced or becoming owing, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer (*e*) of the premises unto the borrower or as he shall direct.

Proviso for
redemption.

(*e*) See sub-sect. (4) of sect. 115 of the L. P. A. 1925.

XIII.
MORTGAGE
TO SECURE
LOAN AND
FUTURE
ADVANCES.

4. [Covenant against registration, see ante, p. 11.]

[Insert any special covenants or provisoes as to payment of principal and interest, insurance, &c. from preceding precedents.]

IN WITNESS, &c.

XIV. MORTGAGE of FREEHOLDS, PART of PROPERTY
comprised in a PRIOR MORTGAGE; the PRIOR MORTGAGEE
concurs to POSTPONE his SECURITY (f).

Parties.

Recitals:
of prior
mortgage;

THIS MORTGAGE (g), made the — day of —, 19—, BETWEEN [prior mortgagee], of, &c. (hereinafter called "the prior mortgagee"), of the first part; [mortgagor], of, &c. (hereinafter called "the borrower," which expression shall also include persons deriving title under him or entitled to redeem this security), of the second part; and [mortgagee], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS, by an indenture of mortgage, dated (h), &c., and made between the borrower, of the one part, and the prior mortgagee, of the other part, the hereditaments hereby demised were, with other hereditaments, conveyed unto the prior mortgagee, his heirs and assigns, by way of mortgage to secure the repayment by the borrower, his heirs, executors, administrators, or assigns, on the — day of —, to the prior mortgagee, his executors, administrators, or assigns, of the sum of £— with interest for the same in the meantime, at the rate of — per cent. per annum; AND WHEREAS, by virtue of the Law of Property Act, 1925, the hereditaments so conveyed to the prior mortgagee as aforesaid became and are now vested in

(f) A notice of the postponement should be indorsed on the mortgage to the prior mortgagee.

See K. & E. Vol. II. 11th ed. p. 96 for an alternative method whereby the transaction is carried out by two deeds, one assigning the original mortgage term to the new mortgagee, and the other creating a new mortgage term (i.e., a term longer than the prior mortgage term) subject to the first and vested in the prior mortgagee. In the present form the device of a sub-mortgage is suggested.

Stamp.

(g) Stamp, *ad valorem* on amount secured.

(h) This prior mortgage is assumed to be dated prior to the commencement of the L. P. A. 1925.

the prior mortgagee for a term of three thousand years from the commencement of the said Act, without impeachment of waste, but subject to a proviso for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple (*i*); AND WHEREAS the lender has agreed to lend to the borrower the sum of £——, upon having the repayment of the same with interest thereon, at the rate aforesaid, secured in manner hereinafter appearing; AND WHEREAS the prior mortgagee has, at the request of the borrower, agreed to join in these presents for the purpose of postponing his security under the hereinbefore recited indenture of mortgage to the security intended to be hereby effected, so far as relates to the said hereditaments hereinafter expressed to be hereby demised, in manner hereinafter appearing. NOW THIS DEED WITNESSETH as follows:—

XIV. MORTGAGE
WITH CON-
CURRENCE OF
PRIOR
MORTGAGEE.

of agreement
for present
loan;

of consent
of prior mort-
gagee to post-
pone security.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £——, now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender, &c. [*Covenant to pay principal and interest, ante, p. 9*].

Covenant to
pay principal
and interest.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the prior mortgagee, as mortgagee, at the request of the borrower, doth hereby demise (*k*); AND the borrower, as beneficial owner, doth hereby demise and confirm unto the lender, ALL THAT [*describe parcels*], To HOLD all the premises unto the lender for the residue now unexpired of the said term of three thousand years, except the last day thereof (*l*), free and discharged from the said sum of £—— [*the prior mortgage debt*], and all interest now or hereafter to accrue due for the same, and every part thereof respectively, and from all claims and

Second
testatum.

(*i*) See para. 1 of Part VII. of the first schedule to the L. P. A. 1925.

(*k*) As to the implied covenant against incumbrances by a person who conveys and is expressed to convey "as mortgagee," see sect. 76, subsect. (1) (F) of the L. P. A. 1925, and Part VI. of the second schedule to that Act. As to direction "as beneficial owner," see subsect. (2) of the same section.

(*l*) By sect. 115 (1) of the L. P. A. 1925, a discharge of the prior mortgage can only be made under that section "without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested."

XIV. MORTGAGE
WITH CON-
CURRENCE OF
PRIOR
MORTGAGEE.

Proviso for
redemption.

Prior mort-
gage to
remain in
force subject
to this
security.

Application of
surplus
moneys on
sale.

Acknowledg-
ment of right
to production
of title deeds.

demands under or by virtue of the hereinbefore recited indenture of mortgage; subject nevertheless to the proviso for redemption hereinafter contained.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of —, 19—, pay to the lender the sum of £—; with interest thereon at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the said prior mortgage shall be still subsisting and the prior mortgagee or the persons deriving title under him shall so require, execute at the cost of the person requiring the same a re-assignment, surrender, release, or transfer of the premises unto the prior mortgagee or the persons deriving title under him, or as he or they shall direct, subject to such right or equity of redemption as the same premises would have been subject to on payment of the said sum of £— [*the prior mortgage debt*] and interest thereon, and to all such powers, authorities and provisions as would have been subsisting or exerciseable in relation thereto, under or by virtue of the hereinbefore recited indenture of mortgage if this deed had not been executed.

4. It is hereby agreed and declared that, subject to this security, the hereinbefore recited indenture of mortgage, and all powers therein or thereby contained or implied, shall remain in full force; AND further, that if on a sale of the premises hereby mortgaged, or any part thereof, under the power of sale vested in the lender by virtue of this deed, there shall remain any surplus moneys after discharge of all moneys hereby secured, such surplus moneys shall be paid to the prior mortgagee, or the persons deriving title under him, as such mortgagee or mortgagees, whose receipt for the same shall be a sufficient discharge.

5. [*Covenant against registration, see ante, p. 11.*] (m).

6. The prior mortgagee hereby acknowledges the right of the lender to production of the hereinbefore recited indenture of mortgage, and of the several deeds and documents of title mentioned in the schedule hereto, and to delivery of copies thereof respectively; AND the lender hereby acknowledges the right of

(m) Here insert any special covenants and provisions, *e.g.*, restriction on mortgagor's leasing powers, *ante*, p. 12; covenant to insure, *ante*, p. 15 or p. 28, &c., &c.

the prior mortgagee to the production of this deed (*n*), and to the delivery of copies thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XIV. MORTGAGE
WITH CON-
CURRENCE OF
PRIOR
MORTGAGEE.

XV. MORTGAGE *by* TENANT *for* LIFE *of* SETTLED FREEHOLDS *under the Settled Land Act, 1925, to raise MONEY in CONNEXION with the EXTINGUISHMENT of MANORIAL INCIDENTS (p). ACKNOWLEDGMENT of MORTGAGEE'S RIGHT to PRODUCTION of TITLE DEEDS, and UNDERTAKING for SAFE CUSTODY (q).*

THIS MORTGAGE (*r*), made the — day of —, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called “the bor- Parties.

(*n*) If any of the documents of title relate exclusively to the property comprised in this mortgage, they will probably be handed over to the mortgagee. In that case add here—

“And of the deeds and documents relating to the premises hereby demised mentioned in the second schedule hereto (the receipt of which from the prior mortgagee the lender hereby acknowledges), and to delivery of copies thereof respectively. Acknowledgment of right to production when part of deeds handed over.

“IN WITNESS, &c.”

If, however, the documents relating to the legal estate are not handed over to the mortgagee, the mortgage must be registered in accordance with sect. 10 of the L. C. A. 1925, otherwise it will be void as against a purchaser of the land charged, or of any interest in such land: see sect. 13 (2) of the said Act.

(*p*) By sect. 71 (1) of the S. L. A. 1925, where money is required for (*inter alia*)—

“(v) Compensating the steward on the extinguishment of manorial incidents and discharging the expenses incurred in connexion with the extinguishment;

“the tenant for life may raise the money so required on the security of the settled land, or of any part thereof, by a legal mortgage, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

“(3) The restrictions imposed by this Part of this Act on the leasing powers of a tenant for life do not apply in relation to a mortgage term created under this Act.”

(*q*) The tenant for life must give notice to the trustees of the settlement and to their solicitor of his intention to make this charge, pursuant to sect. 101 of the S. L. A. 1925. Notice of a general intention to make a mortgage or charge is not sufficient: see sub-sect. (2) of sect. 101.

(*r*) Stamp, *ad valorem* on amount secured.

XV.
MORTGAGE BY
TENANT
FOR LIFE TO
RAISE MONEY.

Recitals:
of settlement
created by
deed:

of agreement
for compen-
sation.

of agreement
for loan to
raise money
required for
compensation.

power," which expression shall also include the person or persons who shall for the time being be the estate owner or estate owners of the fee simple of the hereditaments hereby mortgaged or entitled to redeem this security), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS, by an indenture of settlement, dated, &c., and made between [*parties*], the several manors, lands and hereditaments therein mentioned, and comprising, with other hereditaments, the lands and hereditaments hereby demised, were limited and settled to the use of the borrower for his life in possession with remainders over; AND WHEREAS by a vesting deed dated the — day of —, 19—, and made, &c., the said lands and hereditaments were conveyed to the borrower upon the trusts subsisting under the said settlement, and the trustees were therein named as the trustees of the said settlement for the purposes of the Settled Land Act, 1925 (*s*); AND WHEREAS the borrower has, under the power in that behalf given to him by the Settled Land Act, 1925, agreed (*t*) with [*lord*] the lord of the manor of —, in the county of —, for compensation for the extinguishment of the manorial incidents affecting certain lands and hereditaments formerly copyhold of the said manor, but now enfranchised by virtue of the Law of Property Act, 1922, being part of the hereditaments and premises comprised in the hereinbefore recited indenture of settlement; AND WHEREAS the sum of £— is required for the purpose of compensating the steward on the extinguishment of such manorial incidents, and discharging the expenses incurred in connexion with the extinguishment

(*s*) Trustees with a power of sale are "trustees of the settlement" for the purposes of the Settled Land Act: see sect. 2 (8) of the Act of 1882, and sect. 30 (1) (i) of the Act of 1925. If the settlement was made since 1882, and contains a declaration that the trustees are to be trustees of the settlement for the purposes of the Acts, say—

"and the indenture now in recital contained a declaration that the trustees or trustee for the time being thereof should be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890"

or "of the Settled Land Act, 1925,"

or as the case may be.

(*t*) See the thirteenth schedule of the L. P. A. 1922.

(including the costs of this mortgage) (*u*), and the lender has agreed to advance the sum of £—— so required upon having the repayment of the same with interest at the rate hereinafter mentioned secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH as follows:—

XV.
MORTGAGE BY
TENANT
FOR LIFE TO
RAISE MONEY.

Testatum.

1. In consideration of the sum of £—— now paid to the trustees (*x*) by the lender at the request of the borrower (the payment and receipt whereof the borrower and the trustees respectively hereby acknowledge), the borrower, in exercise of the power for this purpose given to him by the Settled Land Act, 1925, and of every other power enabling him in this behalf, hereby, as trustee, demises unto the lender, ALL THOSE [*describe parcels (y)*], To HOLD the same unto the lender without impeachment of waste for the term of three thousand years, to commence from the date hereof, subject to the proviso for redemption following.

Demise by
tenant for
life under
statutory
powers.

2. PROVIDED ALWAYS, that if the borrower shall, on the —— day of ——, 19——, pay to the lender the sum of £——, with interest thereon in the meantime at the rate of —— per centum per annum, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release or transfer of the premises upon the trusts and subject to the powers and provisions for the time being subsisting

Proviso for
redemption.

(*u*) See sect. 71, sub-sect. (1) (ix) of the S. L. A. 1925.

(*x*) The money raised is capital money, and must be paid either to the trustees (who can give a receipt: S. L. A. 1925, s. 95) or into Court, at the option of the tenant for life: s. 75 (1).

By sect. 18 (1) (c) of the S. L. A. 1925, "notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement."

And by sect. 94 (1): "Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the trustee is a trust corporation."

(*y*) In this precedent the lands mortgaged are not the same as those which were affected by the manorial incidents.

XV.
MORTGAGE BY
TENANT
FOR LIFE TO
RAISE MONEY.

Mortgagee to
be entitled to
interest.
Covenant by
tenant for life
to pay interest
during his
life.

in relation to the same under or by virtue of the hereinbefore recited indenture of settlement.

3. PROVIDED ALWAYS, and it is hereby agreed, that if the said sum of £—, or any part thereof, shall not be paid on the — day of —, 19—, then the lender shall thenceforth be entitled to interest at the rate aforesaid, on the said sum of £—, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the — day of —, and the — day of — in every year.

4. AND the borrower hereby covenants with the lender that he the borrower will, during his life, keep down and pay to the lender the interest on the said sum of £—, or on so much thereof as shall for the time being remain unpaid at the rate aforesaid, as and when the same shall become due and payable (z).

5. [*Covenant against registration, ante, p. 11.*]

Acknowledg-
ment of mort-
gagee's right
to production
of title deeds
and under-
taking for
safe custody
(a).

7. AND the borrower hereby acknowledges the right of the lender to the production of the several deeds and documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(z) Sometimes the tenant for life covenants for payment of principal as well as interest: *ut ante*, p. 22. In that case a provision must be added limiting his liability, as follows:—

“PROVIDED ALWAYS that as between the borrower and the mortgaged hereditaments the mortgaged hereditaments shall be the primary security for the moneys hereby secured, but this provision shall not affect the lender or his assigns, or his or their right to enforce his or their securities or remedies hereunder against the said hereditaments, or the borrower personally in such order or manner as he or they may think fit.”

(a) The deeds relating exclusively to the land mortgaged will be delivered to the mortgagee; the acknowledgment and undertaking is with respect to the deeds relating also to settled lands not comprised in the mortgage.

XVI. MORTGAGE *by TRUSTEES of a SETTLEMENT created by WILL, on behalf of an INFANT who would, if of FULL AGE, be TENANT for LIFE of SETTLED FREEHOLDS, under the Settled Land Act, 1925, ss. 26 and 71, to raise MONEY for EQUALITY of EXCHANGE. ACKNOWLEDGMENT of MORTGAGEES' RIGHT to PRODUCTION of TITLE DEEDS.*

XVI.
MORTGAGE BY
TRUSTEES OF
SETTLEMENT
ON BEHALF OF
INFANT FOR
EQUALITY OF
EXCHANGE.

THIS MORTGAGE (b), made the — day of —, 19—, BETWEEN [trustee], of, &c., and [trustee], of, &c. (hereinafter called "the trustees"), of the one part, and [mortgagee], of, &c., and [mortgagee], of, &c. (hereinafter called "the mortgagees"), of the other part; WHEREAS [testator], late of, &c., deceased, duly made and executed his will, dated, &c., and thereby gave and devised all his real estate of every description to the use of [first tenant for life] for his life, and from and after his decease to the use of [infant tenant for life] for his life, with divers remainders over; AND WHEREAS the said [testator] died on the — day of —, 19—, without having revoked or altered his said will, and the same was, on the — day of —, duly proved in the Principal Probate Registry by the executors therein named: AND WHEREAS, by an order of the Chancery Division of the High Court of Justice dated the — day of —, 19—, and made by Mr. Justice —, the trustees were, on the application of the said [first tenant for life], appointed trustees of the settlement created by the said will for the purposes of the Settled Land Acts, 1882 to 1890; AND WHEREAS the said [first tenant for life] died on the — day of —, 19—; AND WHEREAS the said [infant tenant for life] has not yet attained his majority, having been born on the — day

Parties.

Recitals:

of settlement
created by
will;

of death of
testator (c);

of appoint-
ment of
trustees of
settlement by
Court;

of infancy of
tenant for
life;

(b) Stamp, *ad valorem* on amount secured.

Stamp.

(c) If the testator died after 1897, add recital of assent of executors to the devise, as follows:—

"WHEREAS [executor] and [executor], the executors named in the said will, have by writing under their hands, dated the — day of —, assented to the devise of his real estate made by the said [testator] as aforesaid."

XVI.
MORTGAGE BY
TRUSTEES OF
SETTLEMENT
ON BEHALF OF
INFANT FOR
EQUALITY OF
EXCHANGE.

of vesting
deed;

of agreement
for exchange;

of conveyance
of lands taken
in exchange
to trustees of
settlement
and of pay-
ment of
moneys for
equality of
exchange;

of —, 19—; AND WHEREAS, by a vesting deed (*d*) dated the — day of —, 19—, under the hands and seals of the trustees for giving effect to the requirements of the Settled Land Act, 1925, the trustees declared that all the real estate which was then by any means subject to the limitations of the settlement created by the said will was vested in them in fee simple upon the trusts and subject to the powers and provisions upon and subject to which, under the said settlement or otherwise, the same ought to be held from time to time; AND WHEREAS the trustees, on behalf of the said [*infant tenant for life*], recently agreed with [A. B.] for the exchange of certain closes of land and hereditaments hitherto forming part of the real estate of the said [*testator*], so devised by his said will, as is hereinbefore recited, for the several closes of land and hereditaments hereby appointed, hitherto the property of the said [A. B.]; AND WHEREAS, by an indenture bearing even date with, but intended to be executed immediately before, these presents, and made between the said [A. B.] of the one part, and the trustees, of the other part, in consideration of the conveyance as therein mentioned to the said [A. B.] of the several closes of land and hereditaments therein mentioned or referred to, being part of the real estate of the said [*testator*] so devised as aforesaid, and also in consideration of the sum of £— paid to the said [A. B.] by the trustees for equality of exchange, the said [A. B.] has conveyed unto the trustees the several closes of land and hereditaments hereby appointed: To HOLD the same to such of the uses, upon such of the trusts, and with and subject to such of the powers and provisions in and by the said will declared and contained, of and concerning the lands and hereditaments thereby

(*d*) See para. 3 of the second schedule to the S. L. A. 1925:—

“(1) Where, at the commencement of this Act, an infant is beneficially entitled to land in possession for an estate in fee simple or for a term of years absolute, or would, if of full age, be a tenant for life or have the powers of a tenant for life, the settled land shall, by virtue of this Act, vest in the trustees (if any) of the settlement upon such trusts as may be requisite for giving effect to the rights of the infant and other persons (if any) interested. . . .

“(4) Notwithstanding that the settled land is by virtue of this paragraph vested in the trustees of the settlement, they shall, at the cost of the trust estate, in accordance with this Act, execute a principal vesting deed declaring that the settled land is vested in them.”

devised, as are now subsisting; AND WHEREAS the said sum of £—— so paid for equality of exchange as aforesaid, was advanced to the trustees by the mortgagees, and upon the treaty for the said advance it was agreed that the repayment thereof with interest at the rate hereinafter mentioned should be secured in manner herein-after appearing. NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £—— so paid as aforesaid to the trustees by the mortgagees (the receipt whereof the trustees hereby acknowledge), the trustees, on behalf of the said [*infant tenant for life*], and in exercise of the powers for this purpose given to or vested in them, as such trustees as aforesaid of the settlement created by the hereinbefore recited will of the said [*testator*], by the Settled Land Act, 1925 (*e*), and of every other power enabling them in this behalf, hereby, as trustees, demise unto the mortgagees, ALL THOSE several closes of land, &c. [*describe parcels by reference to schedule, ante, p. 13*]; To HOLD the same premises unto the mortgagees, without impeachment of waste, for the term of three thousand years, to commence from the date hereof; subject to the proviso for redemption following.

2. PROVIDED ALWAYS, that if the trustees, or any person or persons for the time being interested in the premises under the hereinbefore recited will, shall, on the —— day of ——, 19——, pay to the mortgagees the sum of £——, with interest thereon in the meantime at the rate of —— per centum per annum, then the mortgagees will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the trustees or such person or persons as aforesaid shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer of the premises, upon the trusts, and subject to the powers and provisions for the time being subsisting in relation to the same under or by virtue of the said will.

3. PROVIDED ALWAYS, and it is hereby agreed, that if the said sum of £——, or any part thereof, shall not be paid on the —— day of ——, 19——, then the mortgagees shall thenceforth

XVI.
MORTGAGE BY
TRUSTEES OF
SETTLEMENT
ON BEHALF OF
INFANT FOR
EQUALITY OF
EXCHANGE.

of advance by
mortgagee of
moneys paid
for equality
of exchange.
Testatum.
Demise
by trustees
under statu-
tory power.

Proviso for
redemption.

Mortgagee to
be entitled to
interest.

(*e*) See sects. 26 and 71 of the S. L. A. 1925.

XVI.
MORTGAGE BY
TRUSTEES OF
SETTLEMENT
ON BEHALF OF
INFANT FOR
EQUALITY OF
EXCHANGE.

Covenant
against
registration.
Qualified.

Acknowledg-
ment of mort-
gagees' right
to production
of title
deeds (f).

be entitled to interest at the rate aforesaid, on the said sum of £——, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year.

4. [*Covenant against registration, as in Precedent II.*, ante, p. 11, *commencing*, "The trustees for themselves and their assigns hereby covenant," &c.; *and qualifying the covenant by the addition of the following clause*: "PROVIDED ALWAYS, that the trustees, or any of them, shall not be under any personal liability in respect of any breach of this covenant except so far as relates to their own personal acts or defaults."]

5. AND the said trustees, on behalf of the said [*infant tenant for life*], hereby acknowledge the right of the mortgagees to the production of the several deeds and documents of title mentioned in the second schedule hereto, and to delivery of copies thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Parcels.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Deeds and Documents of Title.*)

(f) As in this precedent it is intended that the lands taken in exchange shall be the subject of the mortgage, the conveyance of the lands taken in exchange will be handed over to the mortgagees, but the other documents relating to the title of the infant tenant for life and his successors will, generally, be retained by the trustees.

Sect. 85 of the L. P. A. 1925, provides that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.

XVII. DEED of SUBSTITUTED SECURITY by a TENANT for LIFE under the Settled Land Act, 1925, s. 69, CHARGING an INCUMBRANCE affecting LANDS SOLD on other part of the SETTLED LANDS (g).

XVII. DEED OF
SUBSTITUTED
CHARGE BY
TENANT
FOR LIFE.

THIS MORTGAGE (h), made the — day of —, 19—, BETWEEN [tenant for life], of, &c., of the one part, and [mort- Parties.
gagee], of, &c. (hereinafter called “the mortgagee”), of the other Recitals:
part; WHEREAS, by an indenture of mortgage, dated the — day of mortgage;
of —, 19—, and made between [parties], the hereditaments particularly described in the schedule thereunder written were conveyed and assured to the use of the mortgagee in fee simple, by way of mortgage for securing payment of the sum of £— with interest thereon at the rate of — per cent. per annum; AND WHEREAS, by virtue of the provisions of the Law of Property Act, 1925, the said hereditaments were, prior to the execution of the indenture of conveyance hereinafter recited, vested in the mortgagee for a term of three thousand years from the commencement of the said Act, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the fee simple (i); AND WHEREAS, by an indenture of settlement dated the — day of —, 19—, and made between [parties], the said of settle-
ment;

(g) By sect. 69 of the S. L. A. 1925, it is provided as follows:—

“Where there is an incumbrance affecting any part of the settled land (whether capable of being overreached on the exercise by the tenant for life of his powers under this Act or not) the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, or on all or any part of the capital money or securities representing capital money, subject or to become subject to the settlement, whether already charged therewith or not, in exoneration of the first mentioned part, and, by a legal mortgage or otherwise, make provision accordingly.”

Transfer of
incumbrances
on land sold,
&c.

Notice of the tenant for life's intention to make this charge should be given to the trustees of the settlement and to their solicitor: see sect. 101 of the S. L. A. 1925. See also as to substitution of securities on lands acquired by purchase or exchange, sect. 82 of the Act.

(h) Stamp, *ad valorem*, at the rate of 6d. for every 100l. and also for every fractional part of 100l. of the amount secured: see Stamp Act, 1891, sched. Mortgage, &c. (2), *ante*, p. 2.

(i) See Part VII. of the first schedule to the L. P. A. 1925.

XVII. DEED OF
SUBSTITUTED
CHARGE BY
TENANT
FOR LIFE.

of vesting
deed;

of contract by
tenant for life
for sale of
messuage,
&c. free from
incumbrance,
and mort-
gagee's con-
sent thereto;

of conveyance
of messuage,
&c. to pur-
chaser;

of state of
mortgage
debt.

First
testatum.

Charge.

hereditaments comprised in the hereinbefore recited indenture of mortgage were limited, with other hereditaments (but as to the said hereditaments comprised in the said indenture of mortgage, subject thereto and to the said sum of £——, and interest for the same thereby secured) to the use of the said [*tenant for life*] for his life, with divers remainders over; AND WHEREAS, by a vesting deed dated the —— day of ——, 19—, and made, &c., the said hereditaments comprised in and subject to the said indenture of settlement were conveyed to the said [*tenant for life*] upon the trusts subsisting under the said settlement, and X. and Y. were therein named as the trustees of the said settlement for the purposes of the Settled Land Act, 1925; AND WHEREAS the said [*tenant for life*], as such tenant for life as aforesaid, recently contracted with [*purchaser*] for the sale to him of a certain messuage or dwelling-house, and a close or parcel of land thereto adjoining, being part of the said hereditaments comprised in the said indenture of mortgage, and upon the treaty for the said sale, the mortgagee consented that such sale should be made free and discharged from his aforesaid mortgage upon having the payment of the mortgage debt and the interest thereon secured on the hereditaments hereinafter mentioned and in manner hereinafter appearing; AND WHEREAS, by an indenture of conveyance bearing even date with, but executed before these presents, the said messuage and premises so contracted to be sold as aforesaid have been conveyed and released unto the said [*purchaser*], freed and discharged from the said sum of £—— and interest secured by, and all claims and demands under the hereinbefore recited indenture of mortgage, and to the intent that the term subsisting thereunder as aforesaid should, as respects the premises conveyed, merge and be extinguished; AND WHEREAS the whole of the said principal sum of £——, together with interest thereon for the current half-year, is now owing to the mortgagee on the security of the hereinbefore recited indenture of mortgage. NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the premises, the said [*tenant for life*], in exercise of the powers in that behalf by the Settled Land Act, 1925, given to him as such tenant for life in possession as aforesaid, and of every other power (if any) him hereunto enabling, hereby charges the hereditaments hereinafter described and hereby demised (forming part of the hereditaments com-

prised in and now subject to the said indenture of settlement) with the payment of the said principal sum of £——, and all interest due and henceforth to become due thereon in exoneration of and substitution for the said messuage and premises so sold and conveyed by the hereinbefore recited indenture of conveyance of even date herewith as aforesaid.

XVII. DEED OF
SUBSTITUTED
CHARGE BY
TENANT
FOR LIFE.

2. For the consideration aforesaid, the said [*tenant for life*], in exercise of the power or powers aforesaid, hereby, as trustee, doth demise unto the mortgagee ALL THOSE [*substituted lands*]; To HOLD the same unto the mortgagee, without impeachment of waste, for the term of three thousand years to commence from the date hereof, subject to the proviso for redemption following.

Demise of
substituted
lands.

3. [*Proviso for redemption as in Precedent XV., ante, p. 47, substituting "the said [tenant for life]" for "the borrower," and "the mortgagee" for "the lender."*]

4. [*Proviso as to interest, and covenant by tenant for life to pay interest during his life, "as from the —— day of —— last" (the last half-yearly day of payment), ante, Precedent XV., p. 48, substituting as above.*]

5. [*Covenant against registration, ante, p. 11, substituting as above.*]

6. AND the said [*tenant for life*] hereby acknowledges the right of the mortgagee to the production of the hereinbefore recited indenture of settlement and vesting deed (of which he now retains and holds possession), and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

Acknowledg-
ment of mort-
gagee's right
to production
of settlement,
and under-
taking.

IN WITNESS, &c.

XVIII. MORT-
GAGE OF TERM
FOR RAISING
PORTIONS.

XVIII. MORTGAGE of FREEHOLD LANDS *under a TERM
created by a SETTLEMENT for RAISING PORTIONS for
YOUNGER CHILDREN.*

Parties (l).

THIS MORTGAGE (k), made the — day of —, 19—,
BETWEEN [trustee], of, &c., and [trustee], of, &c. (hereinafter
called “the trustees”), of the first part; [tenant in tail], of, &c.
(hereinafter called “the estate owner”), of the second part;
[portionist], of, &c., and [portionist], of, &c., of the third part;
and [mortgagee], of, &c. (hereinafter called “the mortgagee”),

Parties.

(k) Stamp, *ad valorem* on amount secured.

(l) See sect. 3 of the L. P. A. 1925 (manner of giving effect to
equitable interests and powers), and sect. 16 of the S. L. A. 1925, which
provides (*inter alia*), that:

“(iii) Where—

“(a) any principal sum is required to be raised on the security of
the settled land, by virtue of any trust, or by reason of the
exercise of an equitable power affecting the settled land, or
by any person or persons who under the settlement is or are
entitled or together entitled to, or has or have a general power
of appointment over the settled land, whether subject to any
equitable charges or powers of charging subsisting under the
settlement or not; or

“(b) the settled land is subject to any equitable charge for securing
money actually raised and affecting the whole estate the sub-
ject of the settlement;

“the estate owner shall be bound, if so requested in writing, to create such
legal estate or charge by way of legal mortgage as may be required for
raising the money or giving legal effect to the equitable charge:

“Provided that, so long as the settlement remains subsisting, any
legal estate or charge by way of legal mortgage so created shall take
effect, and shall be expressed to take effect subject to any equitable charges
or powers of charging subsisting under the settlement which have priority
to the interests or powers of the person or persons by or on behalf
of whom the money is required to be raised, or legal effect is required to
be given to the equitable charge, unless the persons entitled to the
prior charges, or entitled to exercise the powers, consent in writing to
the same being postponed, but it shall not be necessary for such consent
to be expressed in the instrument creating such legal estate or charge
by way of legal mortgage.”

The concurrence of the portionists is not essential, according to the
usual frame of the trusts of a portions term, and may, accordingly, often
be safely dispensed with; but such concurrence is desirable if the por-
tionists are *sui juris*.

of the fourth part; WHEREAS by an indenture of settlement, dated, &c., and made between [*parties*] (being the settlement made in consideration of the then intended marriage between the said [A. B.] and [C. D.], afterwards [C. B.], his wife), the several messuages, lands, and hereditaments described in the schedule thereto, and also in the schedule hereto, and hereby assigned, were conveyed unto the trustees, to the uses therein mentioned, until the solemnization of the said marriage, and from and after the solemnization thereof to the use of the said [A. B.] during his life, with remainder to the use that the said [C. B.], if she should survive him, should receive during the remainder of her life a yearly jointure rentcharge of £—, payable as therein mentioned, and subject to such rentcharge, to the use of the trustees for a term of 500 years, without impeachment of waste, upon the trusts thereafter declared of the same, and subject thereto to the use of the first and other sons of the said [A. B.] and [C. B.] successively, according to seniority in tail male, with remainders over as therein is mentioned: AND it was by the indenture now in recital declared that the premises were thereinbefore limited to the trustees for the said term of 500 years, upon trust that if there should be any child or children of the said marriage (other than any son or sons who before his or their respectively attaining the age of twenty-one years should become entitled thereunder to the premises for the first estate in tail male), who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, then the trustees or trustee for the time being should after the death of the said [A. B.], raise by any of the ways and means therein mentioned, and particularly by mortgage of the premises, or any of them, for all or any part of the said term, for the portion or portions of such child or children (other than as aforesaid), such sum as therein mentioned, that is to say, if there should be but one such child, the sum of £—, and if there should be but two such children, the sum of £—, and if there should be three or more such children, the sums therein mentioned respectively, the

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GAGE OF TERM
FOR RAISING
PORTIONS.

Recitals of
settlement(m);

(m) Inasmuch as the settlement will be retained with other documents of title by the tenant for life of the settled lands, it is better that the settlement should be recited, than that the mortgage should be expressed to be made as supplemental or as an annex to the settlement.

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GAGE OF TERM
FOR RAISING
PORTIONS.

sum so raiseable to be paid to the child or children for whose portion or portions the same should be raised at such time, and, if more than one, in such shares, and in such manner as the said [A. B.] should by deed or will appoint, and in default of such appointment to be paid unto or among the child or children for whose portion or portions the same should be raised, and, if more than one, in equal shares, being a son or sons, on his or their attaining the age or respective ages of twenty-one years, or being a daughter or daughters on her or their attaining the age or respective ages of twenty-one years, or day or respective days of marriage, which should first happen, if the same respectively should happen after the death of the said [A. B.], but if the same should respectively happen during his life, then immediately after his death; AND WHEREAS the said marriage was duly solemnized shortly after the date of the hereinbefore recited indenture of settlement (*n*); AND WHEREAS the said [A. B.] died on the — day of —, 19—, without having exercised the power of appointment so given to him by the hereinbefore recited indenture of settlement as aforesaid; AND WHEREAS there was issue of the said [A. B.] and [C. B.] three children and no more, that is to say, the estate owner, who is their first son, and the said [*portionists*], all of which children attained the age of twenty-one years during the life of the said [A. B.]; AND WHEREAS, by a vesting deed dated the — day of —, 19—, and made, &c., the said hereditaments were conveyed to the estate owner upon the trusts subsisting under the said settlement, and the trustees were therein named as the trustees of the said settlement for the purposes of the Settled Land Act, 1925; AND WHEREAS the said [*portionists*] have requested the trustees to raise and pay to them the sum of £— so directed by the hereinbefore recited

of marriage;

of death of
tenant for
life;

of number
and ages of
younger
children (*o*);

of request to
trustees to
raise por-
tions (*p*).

(*n*) If there has been a resettlement of the property whereby the tenant in tail's interest has been cut down to a life interest, it must of course be recited. So, also, if the entail has been cut off, and the estate converted into a fee simple subject to the subsisting charges.

(*o*) If some of the younger children have not attained their majority, a recital must be here introduced, instead of the recital in the text, stating the number of the younger children and their respective names and dates of birth.

Recitals when
some only of

(*p*) In the event referred to in the last preceding note the amount to be raised may be merely that of the share of one or more portionists who

indenture of settlement to be raised for portions as aforesaid; AND WHEREAS the trustees have applied to the mortgagee to lend to them the sum of £—— for the purpose of such portions, which he the mortgagee has agreed to do, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing; AND WHEREAS the trustees have in writing requested the estate owner to create such legal estate or charge by way of legal mortgage as may be required for raising the said sum of £—— for the purpose aforesaid, and the estate owner has, in accordance with such request, agreed to join in this deed in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

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of agreement for loan.

First
testatum.

Covenant by
tenant in tail
portionists
are *sui juris*.

1. In pursuance of the said agreement, and in consideration have attained the age of twenty-one years, in which case this recital will run as follows:

“AND WHEREAS the said [*adult portionist or portionists*] has [have] requested the trustees to raise and pay to him [them respectively] the sum of £——, being the share [shares] to which he is [they are respectively] entitled of the sum of £—— now presumptively raiseable for portions under or by virtue of the hereinbefore recited indenture of settlement.”

And the recital here given may be continued as follows if the settlement contains a power for the trustees to raise the whole sum for portions before all are actually payable:

“And the trustees, in the exercise of the discretion as aforesaid, have determined to raise the whole of the said sum of £——, so presumptively raiseable as aforesaid, of which the sum of £—— is [several sums of £—— and £—— are] to be paid to the said [*adult portionist or portionists* respectively], and the sum of £——, the remainder thereof, is to be held and invested by the trustees in manner directed by the hereinbefore recited indenture of settlement, as the primary fund for the payment of portions or other payments which may hereafter become payable under the trusts of the said term of —— years created by the same indenture.”

It will be necessary, in this case, that the material parts of the power to raise the whole amount should be recited in the recital of the settlement; the remainder of the money raised will be paid to the trustees, and they will acknowledge the receipt thereof. Whether the whole of the portions can be raised whilst some of the portionists are infants or their interests are contingent is doubtful: see *Gillibrand v. Goold*, 5 Sim. 149; *Leech v. Leech*, 2 Dr. & War. 568.

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GAGE OF TERM
FOR RAISING
PORTIONS.

for payment
of principal
and interest
(*q*).

of the sum of £—— to the said [*portionist*], and of the sum of £—— to the said [*other portionist*], making together the sum of £——, now paid by the mortgagee, at the request and by the direction of the trustees, and with the approbation of the estate owner (the receipt and payment of which sum of £—— the said [*portionists*] and the trustees respectively hereby acknowledge), the estate owner hereby covenants with the mortgagee [*covenant for payment of principal and interest*, ante, p. 22, substituting “the estate owner” for “the borrower,” and “the mortgagee” for “the lender”].

Assignment.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the trustees, in execution of the trust for this purpose reposed in them by the hereinbefore recited indenture of settlement, hereby assign and convey (*r*), and the estate owner, as trustee, hereby, pursuant to sect. 16 of the Settled Land Act, 1925, demises and confirms (*s*) unto the mortgagee, ALL, &c. [*describe parcels*]; To HOLD the same unto the mortgagee for all the residue now unexpired of the said term of 500 years, without impeachment of waste; subject nevertheless to the said annual jointure rentcharge of £——, by the said indenture of settlement limited in favour of the said [C. B.] during her life as aforesaid, and the powers and remedies for recovering payment of the same; AND ALSO subject to the proviso for redemption following:—

Subject to
jointure.

(*q*) If the tenant in tail or for life is merely to covenant to keep down the interest during his life, this covenant will be omitted and the acknowledgment will be immediately followed by the words “the trustees in execution,” &c., as in clause 2, and a further clause as mentioned in note (*y*), p. 62, will be added.

(*r*) The trustees assign their equitable term and the estate owner creates a legal term of 500 years.

(*s*) By sub-sect. 2 of sect. 16 of the S. L. A. 1925:—

“Where a mortgage or charge is expressed to be made by an estate owner pursuant to this section, then in favour of the mortgagee or chargee and persons deriving under him, the same shall take effect in priority to all the trusts of the settlement and all equitable interests and powers subsisting or to arise under the settlement except those to which it is expressly made subject, and shall so take effect, whether the mortgagee or chargee has notice of any such trusts, interests or powers or not, and the mortgagee or chargee shall not be concerned to see that a case had arisen to authorise the mortgage or charge, or that no more money than was wanted was raised.”

3. PROVIDED ALWAYS, that if the trustees, or the estate owner, or any other person or persons for the time being entitled to the premises hereby assigned in remainder immediately expectant on the determination of the said term, shall, on the — day of —, 19—, pay to the mortgagee the sum of £—, with interest for the same at the rate aforesaid (*t*), then the mortgagee shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt execute (at the request and cost of the trustees, or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, or of the estate owner, his executors, administrators, or assigns, or any such other person or persons entitled as aforesaid) a re-assignment, surrender, release, or transfer of the premises unto the trustees, or the survivor of them, or the executors or administrators of such survivor, their or his assigns, or the estate owner, his executors, administrators, or assigns, or any such other person or persons entitled as aforesaid, or as he or they shall direct.

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Proviso for redemption.

4. PROVIDED ALWAYS, that if the said sum of £— shall not be duly paid on the said — day of —, 19—, the mortgagee shall be entitled to interest thereon, or on so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments, on the — day of — and the — day of — in every year.

Interest to be payable after default (*u*).

5. PROVIDED ALWAYS, that no power of sale of the premises

Exclusion of power of sale (*x*).

(*t*) If there is not a covenant for payment of principal and interest, say, “at the rate of — per cent. per annum.”

(*u*) This proviso will be required only if there is not an absolute covenant for payment of principal and interest, in which case its insertion is advisable: see *Re Roberts*, 14 Ch. D. 49; see also *Ex parte Furber*, 17 Ch. D. 191.

(*x*) It is very usual, especially where the repayment of the loan is secured by the covenants of the tenant for life or in tail, for money to be lent to pay family charges without a power of sale. By sub-sect. (4) of sect. 101 of the L. P. A. 1925 (which section relates, *inter alia*, to the mortgagee's power of sale), it is provided that: “This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.”

By sub-sect. (6): “The power of sale conferred by this section includes

XVIII. MORT-
GAGE OF TERM
FOR RAISING
PORTIONS.

Costs of
notice of term
in case of
registration
of reversioner.

Trustees not
to be person-
ally liable.

hereby assigned, or any part thereof, shall be deemed to be implied by or in, or to apply to this security under or by virtue of any statute or otherwise howsoever (*y*).

6. [*Covenant by "the estate owner" with "the mortgagee" against registration, see ante, p. 11.*]

7. IT IS HEREBY AGREED AND DECLARED that the costs incurred by the mortgagee, or his assigns, after any person or persons shall have been registered as proprietor or proprietors of the reversion expectant on the said term, of registering notice of such term pursuant to the Land Registration Act, 1925, together with interest thereon after the rate aforesaid, shall be charged on the mortgaged premises.

8. PROVIDED that nothing herein contained shall render the trustees, or either of them personally, or their or his heirs, executors, administrators, estates, or effects, liable as for a debt in respect of any moneys intended to be hereby secured.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XIX. MORTGAGE of LEASEHOLDS *by* EXECUTORS (*z*).

Parties.

THIS MORTGAGE (*a*), made the — day of —, 19—,
BETWEEN [*executor*], of, &c., and [*executor*], of, &c. (hereinafter

such power of selling the estate in fee simple, or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages": see sects. 88 and 89 of the L. P. A. 1925.

(*y*) If the estate owner merely covenants to keep down the interest during his life, add here the following covenant:

Covenant by
tenant in tail
or for life to
keep down
interest
during his
life.

"And in consideration of the premises, the estate owner hereby covenants with the mortgagee that he the estate owner will during his life pay to the mortgagee interest at the rate aforesaid on the said sum of £—, or so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the — day of — and the — day of — in every year."

(*z*) By sect. 39 of the Ad. of E. A. 1925:—

"(1) In dealing with the real and personal estate of the deceased his personal representatives shall, for purposes of administration, or during

Stamp.

(*a*) Stamp, *ad valorem* on amount secured.

called "the executors"), of the one part, and [mortgagee], of, &c. (hereinafter called "the mortgagee"), of the other part; WHEREAS, by an indenture of lease dated the — day of —, and made between [lessor], of the one part, and [testator], of, &c., deceased, of the other part, the messuage and piece of land, &c. [describe parcels from lease], being the premises hereby demised were demised to the said [testator] for the term of — years from the — day of —, at the yearly rent of £—, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed; AND WHEREAS the said [testator] duly made and executed his will, dated, &c., and thereby appointed the executors and [A. B.] to be the executors thereof; AND WHEREAS the said [testator] duly made a codicil, dated, &c., and thereby revoked the hereinbefore

XIX.
MORTGAGE OF
LEASEHOLDS
BY
EXECUTORS.

Recitals:
of lease to
testator;

of will
appointing
executors;
of codicil:

a minority of any beneficiary, or the subsistence of any life interest, or until the period of distribution arrives, have—

- "(i) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to personal estate vested in him, and such power of raising money by mortgage may, in the case of land, be exercised by way of legal mortgage."

As to the power of executors to mortgage or pledge any part of their testator's estate, see *McLeod v. Drummond*, 17 Ves. 154. The power extends to an administrator (*Russell v. Plaice*, 18 Beav. 21), including an administrator *durante minore ætate*: *In re Cope*, L. R. 16 Ch. D. 49.

Power of
executors to
mortgage.

Prior to the 1st of January, 1926, executors generally preferred to mortgage leaseholds by assignment rather than by sub-demise. This is now impossible, for, by sub-sect. (2) of sect. 86 of the L. P. A. 1925: "Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a sub-demise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following," &c.

A trust of the nominal reversion has become unnecessary; for where a mortgagee sells under his statutory or express power of sale, "the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the Court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made, and to any money thereby secured": see sect. 89 of the L. P. A. 1925.

XIX.
MORTGAGE OF
LEASEHOLDS
BY
EXECUTORS.

of death of
testator, and
probate of
will and
codicil;
of agreement
for loan;

Testatum.

Demise.

Proviso for
redemption.

recited appointment of the said [A. B.] to be one of the executors of his said will, but in all other respects the said [*testator*] confirmed his said will; AND WHEREAS the said [*testator*] died on the — day of —, 19—, and his hereinbefore recited will and codicil were, on the — day of —, 19—, duly proved by the executors, as such executors thereof as aforesaid, in the Principal Probate Registry; AND WHEREAS the executors, having occasion for the sum of £— for the purpose of paying thereout certain debts or liabilities of the said [*testator*], have applied to the mortgagee to lend to them such amount, which the mortgagee has agreed to do upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £— now paid to the executors by the mortgagee (the receipt whereof is hereby acknowledged), the executors, as personal representatives of the said [*testator*], deceased (*b*), hereby demise unto the mortgagee, ALL THOSE the messuage and premises comprised in and demised by the hereinbefore recited indenture of lease; To HOLD the same unto the mortgagee for all the residue now unexpired of the said term of — years created by the hereinbefore recited indenture of lease, except the last — days of the said term, subject to the proviso for redemption following:—

2. PROVIDED ALWAYS, that if the executors, or one of them, or any other person or persons interested in the premises hereby demised under the hereinbefore recited will and codicil of the said [*testator*] shall, on the — day of —, 19—, pay to the mortgagee the sum of £—, with interest thereon in the meantime at the rate of — per cent. per annum, then the mortgagee shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or

(*b*) As to the statutory covenants implied by conveying “as personal representatives,” see sect. 76, sub-sect. (1) (F), of the L. P. A. 1925, and Part VI. of the second schedule thereto; and see *Wise v. Whitburn*, [1924] 1 Ch. 460; 93 L. J. Ch. 235—a case decided on sect. 7, sub-sect. (1) (F), of the C. A. 1881, in which the terms of the implied covenant are the same as in the Act of 1925.

in lieu of such receipt execute at the request and cost of the executors, or one of them, or such other person or persons as aforesaid, a re-assignment, surrender, release or transfer of the premises unto the executors, or the survivor of them, or their or his executors, administrators, or assigns, or as they or he shall direct.

XIX.
MORTGAGE OF
LEASEHOLDS
BY
EXECUTORS.

3. [*Proviso that on default in payment on the day appointed the mortgagee shall be entitled to interest, ante, p. 61*] (c).

4. [*Covenant by "the executors" against registration, Precedent II., ante, p. 11, qualified by restricting the personal liability, as in Precedent XVI., p. 52, mutatis mutandis in each case.*]

5. PROVIDED ALWAYS, that nothing herein contained shall render the executors, or either of them personally, or their or his heirs, executors, or administrators, estates or effects, liable as for a debt by virtue or in respect of these presents or of any principal moneys or interest hereby secured.

Executors not
to be personally
liable.

IN WITNESS, &c.

**XX. MORTGAGE by the COMMITTEE of a LUNATIC
TENANT in TAIL of FREEHOLDS by DEMISE without
POWER of SALE (d).**

THIS MORTGAGE (e), made the — day of —, 19—,
BETWEEN [*lunatic*], a person of unsound mind so found by in-
quisition (f), by [*committee*], of, &c., the committee of the
estate of the said lunatic (hereinafter called "the com-
mittee"), of the one part, and [*mortgagee*], of, &c. (hereinafter
called "the mortgagee"), of the other part; WHEREAS, by an

Parties.

Recitals:

(c) See as to this proviso, *ante*, p. 61, note (u).

(d) See *Re Pares*, 2 Ch. D. 61.

(e) Stamp, *ad valorem* on amount secured.

Stamp.

(f) Where the lunatic is not so found, say,

Lunatic not
so found.

"a person of unsound mind not so found by inquisition, by [A.],
of, &c., the person appointed to exercise the powers of a committee
of his estate (hereinafter called 'the committee')."

As to the appointment by a judge or Master in Lunacy of a person so
to act, see Lunacy Act, 1908, s. 1; and see also Lunacy Act, 1911, s. 1.

XX.
MORTGAGE BY
COMMITTEE
OF LUNATIC
TENANT
IN TAIL.

of settlement
under which
lunatic is
tenant in tail
in possession
of settled
lands;

of order
appointing
committee(g);

of order for
raising money
by mortgage;

of agreement
for loan;

of master's
approval of
mortgage;

of payment
of money
advanced into
Court.

Testatum.

Demise of
ands for
— years.

indenture of settlement dated the — day of —, and made between [*parties*], the hereditaments hereinafter described and hereby demised, with other hereditaments, stood limited to the uses and upon the trusts therein mentioned, under which the said [*lunatic*] is now tenant in tail in possession thereof, free from incumbrances; AND WHEREAS by a vesting deed, dated, &c., and made, &c., the said hereditaments were conveyed to the said [*lunatic*] upon the trusts subsisting under the said settlement, and X. and Y. were therein named as the trustees of the said settlement for the purposes of the Settled Land Act, 1925; AND WHEREAS by an Order in Lunacy dated the — day of —, 19—, and made in the matter of the lunacy of the said [*lunatic*], it was ordered that the committee should be the committee of the person and estate of the said [*lunatic*]; AND WHEREAS by an Order in Lunacy dated the — day of — 19—, and made in the matter of the lunacy of the said [*lunatic*], it was ordered that the committee, as such committee as aforesaid should be at liberty, in the name and on behalf of the said [*lunatic*], to execute a mortgage of the hereditaments hereby mortgaged on payment into Court by the mortgagee of the sum of £—; AND WHEREAS the mortgagee has agreed to lend to the committee, as such committee(h) of the said [*lunatic*] as aforesaid, the sum of £— upon the security of these presents; AND WHEREAS [C. D.], one of the masters in lunacy, has settled and approved of this deed as a proper mortgage of the premises, pursuant to the said order of the — day of —, and in testimony of such approval the seal of the said master has been affixed in the margin hereof; AND WHEREAS the mortgagee, on the — day of —, duly paid the said sum of £— into Court to the credit of “[*lunatic*] a person of unsound mind,” to an account entitled, &c. NOW THIS DEED WITNESSETH that, in pursuance of the said order, and in consideration of £— so paid into Court as aforesaid, the payment whereof in manner aforesaid the committee hereby acknowledges, the said [*lunatic*], acting by the committee, as such his

(g) Where the lunatic is not so found, this recital will require some variation.

(h) In the case of a lunatic not so found, say,
“the person so appointed as aforesaid.”

XX.
MORTGAGE BY
COMMITTEE
OF LUNATIC
TENANT
IN TAIL.

committee as aforesaid (*h*), hereby, as beneficial owner, demises (*i*), and the committee, as such committee as aforesaid (*h*), hereby confirms unto mortgagee ALL, &c. [*describe parcels*]; To HOLD the same unto the mortgagee henceforth for the term of — years freed and discharged, for the purpose of giving effect to this security, but not further or otherwise, from the estate tail of the said [*lunatic*] therein, and all estates in reversion, remainder, or otherwise, to take effect after determination or in defeasance of such estate tail (*k*), but subject to the proviso for redemption following, that is to say, that if the committee, or any person or persons entitled to the premises hereby demised, shall, on the — day of —, 19—, pay to the mortgagee the sum of £— with interest thereon in the meantime at the rate of — per cent. per annum, then the mortgagee shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt if the committee or such person or persons as aforesaid shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release or transfer of the premises unto the person or persons who for the time being would have been entitled to the same under the hereinbefore recited indenture of settlement if these presents had never been made or executed. [*Proviso that after default in payment the mortgagee shall be entitled to interest, ante, p. 61.*] PROVIDED ALSO, and it is hereby declared, that so long as the interest payable in respect of the said sum of £—, or on so much thereof as shall for the time being remain unpaid, shall be paid on the days on which the same shall become payable, or within thirty days after the same shall become payable, and the said [*lunatic*]

Proviso for
redemption.

Interest to be
payable after
default.

Exclusion of
power of sale
so long as
interest is
paid.

(*h*) See note (*h*) previous page.

(*i*) As to the lunatic covenanting for title, see *Re Ray*, [1896] 1 Ch. 468. As to his covenanting for payment, see *ibid.*, and *Re Fow*, L. R. 33 Ch. D. 37.

(*k*) See *In re Pares*, 2 Ch. D. 61, at p. 62, where James, L. J., said that it could not be assumed that the lunatic, if sane, would have desired to bar the entail, and it ought not to be barred further than was necessary for the purpose. The order would be that the mortgage be made for a term of years, and without any power of sale, and the equity of redemption would be reserved to the persons entitled under the settlement.

XX.
MORTGAGE BY
COMMITTEE
OF LUNATIC
TENANT IN
TAIL.

shall live, no power of sale of the premises hereby demised, or any part thereof, shall be exerciseable in respect of, or applied to this security under or by virtue of any statute, or otherwise howsoever.

IN WITNESS, &c.

XXI. MORTGAGE *by HUSBAND and WIFE MARRIED before the 1st of JANUARY, 1883, of FREEHOLDS belonging to the WIFE, and not being her SEPARATE PROPERTY (l).*

Parties.

Recital of
seisin;
of wife's
title;

THIS MORTGAGE (m), made the — day of —, 19—, BETWEEN [*husband*], of, &c., and [*wife*], his wife (hereinafter called “the borrowers”), of the one part; and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part; WHEREAS the said [*husband*] and [*wife*], in right of the said [*wife*], are seised or possessed of the hereditaments hereby assured in fee

Mortgage of
wife's lease-
holds.

(l) This deed would formerly have required acknowledgment by the wife. But see now sect. 167 of the L. P. A. 1925, which enacts that—

“(1) Every disposition (including a disclaimer) of real or personal property, or any interest therein which a married woman is under the Fines and Recoveries Act, 1833, or the Married Women’s Reversionary Interests Act, 1857, or any other enactment authorised to make by deed acknowledged in the manner prescribed by any such Act as amended by any subsequent enactment, shall, from the date of execution of the deed of disposition, be effectual if made by her with the concurrence of her husband, but without acknowledgment.

“(4) This section applies only to deeds executed and orders made after the commencement of this Act, and does not render necessary the concurrence of a husband in any deed where such concurrence would not have been requisite if this section had not been passed.”

In a mortgage by a husband of his wife’s leaseholds, where the property was acquired by her and the marriage took place before the 1st of January, 1883, her concurrence will not be required. The deed should contain recitals of the lease or its assignment to the wife, and of the marriage, and that no settlement affects the premises; the remainder of the mortgage may be in the form of an ordinary mortgage of leaseholds by the husband alone: see *ante*, Precedents VIII. and IX., pp. 25, 27. As to mortgages by married women of their separate property, see *ante*, p. 8, note (c).

Stamp.

(m) Stamp, *ad valorem* on amount secured; but see note (o) below.

simple in possession, free from incumbrances; AND WHEREAS the lender has agreed to lend to the borrowers the sum of £——, upon having the repayment thereof, with interest at the rate herein-after mentioned, secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

XXI.
MORTGAGE BY
HUSBAND AND
WIFE OF
FREEHOLDS.

of agreement
for loan (n).

Testatum.

Joint and
several
covenants by
husband and
wife for
payment of
principal and
interest.

1. In consideration of the sum of £—— now paid to the borrowers by the lender (the receipt whereof the borrowers hereby acknowledge), the borrowers hereby jointly and severally covenant with the lender that they the borrowers, or their respective executors, or administrators, or some or one of them, will pay to the lender, on the —— day of —— next, the sum of £——, with interest thereon in the meantime at the rate of —— per cent. per annum, and also as long after that day as any principal money shall remain due under this mortgage, will pay to the lender interest thereon at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the said [*wife*], as beneficial owner, with the concurrence of the said [*husband*], hereby demises, and the said [*husband*] as beneficial owner, hereby demises and confirms unto the lender, ALL, &c. [*describe parcels*], To HOLD all the premises unto the lender without impeachment of waste for the term of three thousand years to commence from the date hereof, subject to the following proviso for redemption.

Second
testatum.

Demise.

3. PROVIDED ALWAYS, that if the borrowers, or their respective executors, administrators, or assigns, or some or one of them, shall, on the —— day of —— next, pay to the lender the sum of £——, with interest thereon at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act,

Proviso for
redemption.

(n) It might be desired that the loan should be treated as made to the husband at the wife's request and not to the two jointly, in which case it should be so recited, and the consideration would be expressed to be "paid to the said [*husband*] at the request of the said [*wife*], the receipt and payment whereof in manner aforesaid the said [*husband*] and [*wife*] hereby respectively acknowledge." It would not in that case be convenient to refer to the husband and wife as "the borrowers," and "the said [*husband*] and [*wife*]" would have to be substituted for that expression.

XXI.
MORTGAGE BY
HUSBAND AND
WIFE OF
FREEHOLDS.

1925, or in lieu of such receipt if the borrowers or their respective executors, administrators, or assigns, or some or one of them shall so require, execute at the cost of the person or persons requiring the same, a re-assignment surrender, release or transfer of the premises unto the said [*wife*], her executors, administrators, or assigns, or as she or they shall direct (*o*).

4. AND the borrowers hereby jointly and severally covenant, &c. [*continue covenant against registration, Prec. II., ante, p. 11*].

Proviso as to
primary
liability.

5. PROVIDED ALWAYS, that, as between the said [*husband*], of the one part, and the said [*wife*], and the premises hereby demised, of the other part, the said [*husband*] shall be primarily liable for the principal moneys and interest intended to be hereby secured: but it is hereby expressly declared, that the proviso hereinbefore contained with respect to the primary liability of the said [*husband*] shall not affect the lender, or his right to have recourse to, and enforce all or any securities, or remedies for the recovery of the said principal moneys and interest hereby secured, in such order and manner as he shall think fit.

IN WITNESS, &c.

XXII. DECLARATION of TRUST of MONEY ADVANCED
by SEVERAL sets of LENDERS, on the SECURITY of a
MORTGAGE to TRUSTEES (*p*).

Parties.

THIS DEED (*q*), made the — day of —, 19—, BETWEEN [*trustee*], of, &c., [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the first part; [*A. B.*], of, &c., of the second part; [*C. D.*], of, &c., and [*E. F.*], of, &c., of the third part; [*G. H.*], of, &c., and [*J. K.*], of, &c., of the fourth part; and [*L. M.*], the wife of [*N. M.*], of, &c., of the fifth part; WHEREAS by an indenture of mortgage bearing even

Recitals:
of mortgage;

(*o*) If the equity of redemption were reserved to the husband the stamp would have to be adjudicated, since in that case the deed might be liable to an *ad valorem* stamp, as a voluntary conveyance, under sect. 74 of the Finance (1909-10) Act, 1910, notwithstanding sect. 87 (6) of the Stamp Act, 1891.

(*p*) The mortgage will be in the form of Precedent III., *ante*, p. 12.

Stamp.

(*q*) Stamp, 10s.

date with but executed before these presents, and made between [mortgagor], of the one part, and the trustees, of the other part, in consideration of the sum of 10,000*l.* paid to the said [mortgagor] by the trustees out of money expressed to be belonging to them on a joint account, the said [mortgagor] demised unto the trustees certain messuages and hereditaments situate in the parish of—, in the county of —, therein particularly described, To HOLD unto the trustees, without impeachment of waste for the term of three thousand years to commence from the date of the said indenture, subject to a proviso for redemption thereof on payment by the said [mortgagor], or the person or persons deriving title under him or entitled to redeem the said mortgage, to the trustees of the sum of 10,000*l.*, with interest thereon in the meantime at the rate of — per cent. per annum on the — day of —, 19—; AND WHEREAS the said sum of 10,000*l.* in the hereinbefore recited indenture expressed to have been advanced by the trustees out of moneys belonging to them on a joint account was in fact contributed by the several persons, and in the proportions or sums following, that is to say, the sum of 4,000*l.*, part thereof, by the said [A. B.], the sum of 3,000*l.*, further part thereof, by the said [C. D.] and [E. F.] out of moneys belonging to them as the trustees of an indenture of settlement, dated the — day of —, 19—, and made between [parties], being the settlement made in consideration of the marriage of [husband] and [wife] (r), the sum of 2,000*l.* by the said [G. H.] and [J. K.], the executors and trustees named in the will dated, &c., and proved, &c., of [testator], of, &c., deceased, and the sum of 1,000*l.*, the residue of the said sum of 10,000*l.* by the said [L. M.] out of moneys forming part of her separate estate; AND WHEREAS the trustees have accordingly, at the request of the several persons by whom the said sum of 10,000*l.* was so contributed as aforesaid, agreed to make and execute such declaration of trust as is herein-after contained: NOW THIS DEED WITNESSETH as follows:—

XXII.
DECLARATION
OF TRUST OF
SEPARATE
SUMS
ADVANCED.

of contribu-
tion of
moneys
advanced;

of agreement
for declaration
of trust.

Testatum.

1. In pursuance of the said agreement, and in consideration of the premises, the trustees hereby declare that they and the [survivors and] survivor of them, and the executors, adminis-

Declaration
of trust of
aggregate
sum secured.

(r) As to trustees lending on a contributory mortgage, see *Webb v. Jones*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328.

XXII.
DECLARATION
OF TRUST OF
SEPARATE
SUMS
ADVANCED.

trators of such survivor, and their or his assigns, shall henceforth stand possessed of and interested in the said principal sum of 10,000*l.* secured by the hereinbefore recited indenture of mortgage and the interest thereon upon the trusts following, that is to say: Upon trust out of the moneys which shall be received from them from time to time under the said mortgage in the first place to pay all their costs, charges, and expenses of and incident to the demanding, recovering, and enforcing payment of the same moneys, and of the execution of the trusts of these presents; AND subject thereto on trust rateably and *pari passu* for the several persons by whom the said sum of 10,000*l.* was contributed, or their respective executors, administrators, or assigns, according and in proportion to the several sums so contributed and advanced by them respectively as aforesaid.

Declaration
of trust of
mortgaged
premises.

2. It is hereby further declared that the trustees, and the [survivors and] survivor of them, and the executors and administrators of such survivor, and their or his assigns, shall stand and be possessed of and interested in the hereditaments comprised in the hereinbefore recited indenture of mortgage, and the term of years thereby granted, subject to the proviso for redemption therein subsisting, and of all other securities for the payment of the said principal sum of 10,000*l.*, and interest thereon, in trust for the said several persons by whom the said principal sum of 10,000*l.* was contributed according and in proportion to the sums contributed and advanced by them respectively as aforesaid.

Proviso as to
exercise of
powers of
sale, &c.

3. PROVIDED ALWAYS, and it is hereby further declared, that the power of sale and other powers vested by statute in mortgagees, except powers of leasing and agreeing to lease or let, shall be forthwith exerciseable and put in force upon the request in writing of any of the said several persons by whom the said principal sum of 10,000*l.* was so contributed as aforesaid, or of any other person or persons for the time being entitled to the whole or a part or share of any of the several sums so contributed as aforesaid.

Powers of
leasing to be
exercised by
trustees at
discretion.

4. PROVIDED ALWAYS, that it shall be lawful for the trustees, and the [survivors and] survivor of them, and the executors and administrators of such survivor, and their or his assigns, to exercise the powers of leasing and agreeing to lease or let vested by statute in mortgagees in possession as and when they shall in their discretion think proper.

IN WITNESS, &c.

XXIII. CONVEYANCE of FREEHOLDS and DEMISE by the
 VENDOR by DIRECTION of a PURCHASER to a MORTGAGEE
 advancing PART of the PURCHASE-MONEY.

XXIII. DEMISE
 TO PERSON
 ADVANCING
 PURCHASE-
 MONEY.

THIS DEED (s), made the — day of —, 19—, BETWEEN
 [v^{endor}], of, &c. (hereinafter called “the v^{endor}”), of the first
 part; [p^{urchaser}], of, &c. (hereinafter called “the p^{urchaser}”),
 of the second part; and [m^{ortgagee}] of, &c. (hereinafter called
 “the m^{ortgagee}”), of the third part; WHEREAS the p^{urchaser} lately
 agreed to purchase from the v^{endor} the hereditaments hereinafter
 described in fee simple, free from incumbrances, at the price of
 2,000*l.*; AND WHEREAS the p^{urchaser} has applied to the m^{ortgagee}
 for the loan of the sum of 1,000*l.* to enable him to complete the
 said purchase, which sum he the m^{ortgagee} has agreed to advance
 upon having the repayment thereof, with interest at the rate
 hereinafter mentioned, secured in manner hereinafter appearing:
 NOW THIS DEED WITNESSETH as follows:—

Parties.

Recitals:
 of contract
 for purchase;
 of agreement
 for loan.

Testatum.

1. In pursuance of the said agreement in this behalf, and in
 consideration of the sum of 1,000*l.* now paid to the v^{endor} by
 the m^{ortgagee}, at the request and by the direction of the p^{urchaser}
 (the receipt and payment whereof the v^{endor} and p^{urchaser} hereby
 respectively acknowledge), the p^{urchaser} hereby covenants with
 the m^{ortgagee}, &c. [*covenant to pay principal and interest*, ante, p. 22].

Covenant by
 purchaser for
 payment of
 principal and
 interest.

2. In further pursuance of the said agreement in this behalf,
 and for the consideration aforesaid, the v^{endor}, at the request
 and by the direction of the p^{urchaser}, hereby, as beneficial owner,
 demises unto the m^{ortgagee} ALL the hereditaments hereinafter
 described, To HOLD the premises unto the m^{ortgagee} without
 impeachment of waste for the term of three thousand years to

Second
 testatum.
 Demise
 of lands by
 v^{endor} to
 m^{ortgagee}.
 Habendum.

(s) Stamp, *ad valorem*, as a conveyance by way of sale, on the total
 amount of the purchase-money (see Vol. I., Conveyances, Preliminary
 Note), and also as a mortgage on the amount advanced by the m^{ortgagee}. Stamp.

This transaction may, if preferred, be effected by means of two deeds,
viz.: (1) a conveyance by way of sale by the v^{endor} to the p^{urchaser}, and
 (2) a mortgage in the ordinary form by the p^{urchaser} to the m^{ortgagee}.
 The stamp duty will be the same in either case.

XXIII. DEMISE
TO PERSON
ADVANCING
PURCHASE-
MONEY.

Conveyance
of freeholds
to purchaser
subject to
mortgage
term.

commence from the date hereof, subject to the proviso for redemption hereinafter contained.

3. In further pursuance of the said agreement, and for the consideration aforesaid, and also in consideration of the further sum of 1,000*l.* now paid to the vendor by the purchaser (the receipt of which sum of 1,000*l.*, making together with the said sum of 1,000*l.* so paid by the mortgagee as aforesaid the aggregate sum of 2,000*l.*, being the total purchase-money for the said hereditaments, the vendor hereby acknowledges), the vendor hereby, as beneficial owner, grants unto the purchaser ALL, &c. [*describe parcels*], To HOLD the premises unto the purchaser in fee simple (*t*), subject to the said mortgage term, but with the benefit of the proviso for redemption following:—

Proviso for
redemption.

4. PROVIDED ALWAYS, that if the purchaser, his executors, administrators, or assigns, shall, on the — day of —, 19—, pay to the mortgagee the sum of 1,000*l.*, with interest for the same in the meantime at the rate of — per cent. per annum, then the mortgagee shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the purchaser, his executors, administrators, or assigns shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer of the premises unto the purchaser, his executors, administrators, or assigns, or as he or they shall direct.

5. [*Covenant against registration as in Precedent II., ante, p. 11, substituting the expression “purchaser” for “borrower” and “mortgagee” for “lender.”*]

[*Insert here, if desired, proviso restricting mortgagor's leasing powers, ante, p. 12; or any other special covenants or provisions.*]

IN WITNESS, &c.

(*t*) The use of the words “in fee simple,” although not absolutely necessary, effectually rebuts the possibility of “a contrary intention”: see sect. 60 of the L. P. A. 1925.

XXIV. MORTGAGE of LAND to SECURE a RETRANSFER of STOCK, and PAYMENT in the MEANTIME of SUMS EQUAL to the DIVIDENDS (u). VARIATION for PAYMENT of INTEREST on the VALUE of the STOCK.

XXIV.
MORTGAGE TO
SECURE
STOCK AND
DIVIDENDS.

THIS MORTGAGE (x), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall also include persons deriving title under him or entitled to redeem this security, where the context so admits), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called “the lenders,” which expression shall include the survivor of them, and the executors and administrators of such survivor, and their or his assigns, where the context so admits (y)), of the other part; WITNESSETH as follows:—

Parties.

First
testatum.

1. In consideration of the lenders having, at the request of the borrower, sold the sum of £—— £2½ per Cent. Consolidated Stock, and having this day paid to the borrower the sum of £——, being the net proceeds of such sale, which sum of stock and the proceeds of the sale thereof respectively belonged to them on a joint account, and of which sum of £—— the borrower hereby acknowledges the receipt, the borrower hereby covenants with the lenders that the borrower will, at his own cost, on the — day of —, 19—, transfer into the names of the lenders the sum of £—— £2½ per Cent. Consolidated Stock; AND will in the meantime pay to the lenders such sums of money as they would have been entitled to receive by way of dividends in respect of the said sum of £—— £2½ per Cent. Consolidated Stock so sold by them as aforesaid, if the same stock had not been sold, at such times and in such manner as such dividends would have been payable [or, AND will, on the

Covenant to
retransfer
stock on
fixed day;

and mean-
while to pay
sums equal to
dividends [or,
interest];

(u) Stock mortgages are not so common as formerly they were. Such a mortgage is not a proper investment of trust funds unless expressly authorised by the instrument creating the trust: *Whitney v. Smith*, L. R. 4 Ch. A. 513.

Whether
trustees may
lend on a
stock mort-
gage.

(x) Stamp, *ad valorem* on value of stock to be replaced: see the Stamp Act, 1891, ss. 6, 87 (1). Under sect. 17 of the Finance Act, 1911: Government stock, if registered, can be transferred by deed, and no stamp duty is required for the deed of transfer.

Stamp.

(y) This interpretation is not legally necessary and may be omitted if desired: see sects. 111 and 114 of the L. P. A. 1925.

XXIV.
MORTGAGE TO
SECURE
STOCK AND
DIVIDENDS.

and after de-
fault to pay
sums equal to
dividends.

said — day of —, pay to the lenders interest on the said sum of £— so paid to him as aforesaid, at the rate of — per cent. per annum from the date of these presents]; AND will also, if the said sum of £— £2½ per Cent. Consolidated Stock, or any part thereof, shall not be transferred into the names of the lenders on or before the — day of —, 19—, pay to the lenders, so long as the same sum of stock or any part thereof shall remain untransferred, such sums of money as they would have been entitled to receive by way of dividends whether before or after the — day of — aforesaid, in respect of the said sum of £— £2½ per Cent. Consolidated Stock if the same had not been sold, or in respect of so much thereof as shall not for the time being have been transferred, by half-yearly payments at the times and in manner appointed for payment of dividends in respect of the like stock [*or (if interest on the loan is to be paid, then instead of* “such sums of money,” &c.), “interest at the rate aforesaid, by equal half-yearly payments, on the — day of — and the — day of — in every year, on the said sum of £—, or on such part thereof as shall not for the time being have been satisfied by a transfer of a proportionate part of the said sum of stock”].

Second
testatum.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby demises unto the lenders ALL THAT, &c. [*parcels*], To HOLD the same unto the lenders, without impeachment of waste for the term of three thousand years to commence from the date hereof (z), subject to the proviso for redemption following.

Proviso for
redemption.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of —, 19—, transfer into the names of the lenders the said sum of £— £2½ per Cent. Consolidated Stock, and shall in the meantime pay to them such sums of money as they would have been entitled to receive by way of dividends in respect of the same stock, if the same had not been sold, at the times and in manner appointed for payment of dividends in respect of the like stock [*or, if interest on the loan is to be paid,* “and shall on the said — day of — pay to the lenders interest on the said sum of £—, at the rate aforesaid from the date of these presents”], then the lenders will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the

(z) This precedent may be adapted to the case of a mortgage of leaseholds or other property.

Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises unto the borrower, or as he shall direct.

XXIV.
MORTGAGE TO
SECURE
STOCK AND
DIVIDENDS.

4. [*Covenant against registration as in Precedent III.*, ante, p. 17.]

[*Here insert any special provisions (a).*]

IN WITNESS, &c.

XXV. MORTGAGE of FREEHOLDS to a BENEFIT BUILDING SOCIETY, *incorporated under the Building Societies Act, 1874 (b), to SECURE SUBSCRIPTIONS and REDEMPTION MONEY, &c.*

THIS MORTGAGE (c), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the mort- Parties (d).

(a) By sect. 205 (xvi) of the L. P. A. 1925, "mortgage" includes a charge for securing "money's worth." The statutory powers of sale, &c. given to mortgagees by that Act therefore apply to stock mortgages.

(b) See Amendment Acts, 1875, 1877, 1884 and 1894. If the society advancing the money is not incorporated under the Act of 1874, the mortgage must be taken in the names of trustees. An infant member of a benefit building society cannot mortgage to the society for advances: *Nottingham, &c. Society v. Thurstan*, [1903] A.C. 6. As to mortgages by executors, see *Thorne v. Thorne*, [1893] 3 Ch. 196.

As to registered land, see the L. R. A. 1925, s. 25 (1) (b), and (as to discharge of charges) sect. 35.

(c) Stamp, *ad valorem* on amount secured: Stamp Act, 1891, s. 87 (2). Stamp. As to the effect of an indorsed receipt on payment off of the mortgage, see Building Societies Act, 1874, s. 42; *Hoskin v. Smith*, 13 App. Cas. 582; *Crosbie Hill v. Sayer*, [1908] 1 Ch. 866; Key & Elph. 11th ed. vol. ii. p. 131, note. See now sect. 115, sub-sect. (9), of the L. P. A. 1925:—
“(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.”

(d) See the interpretation clause at the end of the precedent. This

XXV.
MORTGAGE TO
BUILDING
SOCIETY.

Recitals:
of mort-
gagor's title;
of subscrip-
tion for
shares;
of agreement
for advance.

Testatum.

demise
of freeholds
subject to
right of re-
demption.

Powers to
society on
default;

gagor"), of the one part, and the — Benefit Building Society (hereinafter called "the society"), incorporated under the Building Societies Act, 1874, and having its chief offices at, &c., of the other part; WHEREAS by an indenture, dated the — day of —, 19—, and made between [*parties*], the hereditaments hereby conveyed were assured to the use of the mortgagor, his heirs and assigns; AND WHEREAS the mortgagor is a member of the society, and is now the holder of — shares therein of £— respectively, and numbered — and — respectively; AND WHEREAS it has been agreed that the society shall, under the rules thereof, make an advance to the mortgagor of the sum of £—, in respect of each of his said shares therein, making the aggregate sum of £—, upon his executing such mortgage as is hereinafter contained, for securing to the society the payment under the said rules of the monthly subscriptions, fines, premiums, and other moneys hereinafter mentioned: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £—, being the full amount of £— in respect of each of the said — shares, of which the mortgagor is the holder as aforesaid, now paid to the mortgagor out of the funds of the society (the receipt of which sum of £— the mortgagor hereby acknowledges), the mortgagor hereby, as beneficial owner, demises unto the said society ALL, &c. [*describe parcels*]; To HOLD the same unto the society, without impeachment of waste for the term of three thousand years to commence from the date hereof, subject nevertheless to redemption, when and so soon as all payments hereinafter mentioned, and covenanted to be made in respect of the said — shares shall have been made, and the rules and regulations for the time being of the society in regard to such shares shall have been observed and performed according to the covenants herein contained.

2. IT IS HEREBY AGREED AND DECLARED that, in case default shall be made in any of the said payments, or in the observance or performance of any of the said rules and regulations in regard

mode of defining the parties may be convenient in the case of these mortgages, as it is usual for the solicitors of building societies, after having settled their form of mortgage, to keep printed or lithographed copies in stock for use as occasion arises.

to the said shares, or any of them, for any consecutive ———

monthly meetings of the society after the date of these presents, or if the mortgagor shall become bankrupt, or have a receiving order made against him, or shall enter into any composition or arrangement with his creditors, then, and in any of such events as aforesaid, it shall be lawful for the society at any time thereafter, when, and as they in their discretion shall think fit, to exercise and do all or any of the powers and acts following, that is to say: to demand from the mortgagor the immediate payment of the full amount which, at the date of such demand, would be necessary for the redemption of this mortgage, in accordance with the rules and bye-laws of the society, or to enter into possession and receive the rents and profits of the premises hereby conveyed, or to appoint, and from time to time to remove and re-appoint, a person to collect and receive the same at such percentage for his services as the society shall think reasonable, or to sub-demise the premises, or any part thereof, for such terms and on such conditions as the society shall deem proper or expedient, or complete any unfinished buildings upon the premises, or repair the premises when and as the society shall deem necessary or expedient, or insure any buildings upon the premises in such sums as the society shall deem expedient, or pay all [the chief or other rents and] rates and taxes and all costs, charges, expenses, and outgoings incurred or payable in respect of the premises; AND ALSO, if the society shall think proper, and either before or after the exercise or doing of any of the powers or acts aforesaid, and subject or not to any such sub-demise as aforesaid, to take and absolutely sell and dispose of the premises, or any part thereof, with all such powers as regards mode and conduct of sale, and otherwise as are incident to the statutory power of sale vested in mortgagees, and to convey (e) the premises when sold unto the purchaser or purchasers thereof, or as he or they may direct.

XXV.
MORTGAGE TO
BUILDING
SOCIETY.

to demand
immediate
payment;

to enter;

to appoint
receiver;

to demise:

to complete
buildings,
repair or
insure;

to sell.

3. IT IS HEREBY AGREED AND DECLARED that the society shall, out of the said rents and profits and moneys arising by such sale or sales or the execution of any of the powers herein contained, in the first place, pay all [chief or other rents, and] rates and taxes, and other outgoings, payable in respect of the premises, and all costs, charges, and expenses properly incurred hereunder, or under

Application
of proceeds
of sale.

(e) See sect. 104 of the L. P. A. 1925.

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MORTGAGE TO
BUILDING
SOCIETY.

or by virtue of the rules for the time being of the society applicable hereto, together with interest at the rate of — per cent. per annum, as from the respective times of any such payments as aforesaid, and, in the next place, retain all subscriptions, fines, interest, premiums, and other sums of money, which shall be due or which may become payable in respect of the said shares, it being agreed that in the event of such sale all moneys intended to be hereby secured shall be considered as then due; AND then, and after discharge of all moneys intended to be hereby secured, shall pay the surplus (if any) to the mortgagor, his executors, administrators, or assigns, or as he or they shall direct.

Covenants by
mortgagor :
to pay
monthly sub-
scriptions,
&c. (f);

to comply
with rules ;
to repay sums
expended
under powers ;
to repair and
insure ;

4. The mortgagor hereby covenants with the society that he the mortgagor will from time to time duly and punctually pay to the society all the monthly subscriptions, premiums, interest, fines, and other moneys which shall become due or payable in respect of the said shares, or any of them, according to the rules, bye-laws, or regulations for the time being of the society, or otherwise; AND ALSO will observe and perform the rules, bye-laws, and regulations for the time being of the society in respect of the said shares; AND will on demand pay to the society all and every sums or sum of money which they shall expend under or in execution of the powers hereby conferred on them with interest for the same after the rate of — per centum per annum from the respective times of the payment thereof; AND will keep the buildings now or hereafter standing on the premises in good repair, and also insured against loss or damage by fire to the amount of three-fourths of the value [*or*, not less than £—] at least, in such names, office and manner as shall from time to time be required by the society, and deposit every policy for such insurance with the society, and produce the receipts for the payment of such insurance [and of the chief or other rents payable in respect of the premises] within seven days after the first day on which the same respectively shall become payable, or sooner on request to the proper officer, and at the office for the time being of the society; AND that if the premises shall be sold as aforesaid, and if the rents and profits (if any) received by the society and the moneys produced by the sale shall not be sufficient to answer

to pay any
deficiency on
sale.

(f) The payments vary according to the rules of the particular building society advancing the money.

the trusts hereinbefore declared thereof, the mortgagor will immediately pay to the society the sum necessary to make up such deficiency.

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MORTGAGE TO
BUILDING
SOCIETY.

5. PROVIDED ALWAYS, and it is hereby agreed that none of the powers of leasing or agreeing to lease conferred by the Law of Property Act, 1925 (*g*), on mortgagors in possession shall be exercisable during the continuance of this security by the mortgagor without the written consent of the society.

Restriction
on leasing
powers.

6. [*Covenant against registration as in Precedent III.*, ante, p. 17, substituting the expressions "mortgagor" and "society" for "borrower" and "lenders" respectively.]

Covenant
against regis-
tration.

7. IT IS HEREBY AGREED that the restrictions on the right of consolidation contained in sect. 93 of the Law of Property Act, 1925, shall not apply to this security.

8. IT IS ALSO AGREED that the said rules and bye-laws for the time being of the society shall apply to this mortgage, and be taken by reference as incorporated herein, except so far as is hereby otherwise provided.

Incorporation
of rules.

10. PROVIDED LASTLY, that in these presents so far as the context requires or allows the expressions "the mortgagor" and "the society" shall be taken to include the mortgagor and the society respectively, and all persons deriving title under them respectively.

Interpreta-
tion clause.

IN WITNESS, &c.

XXVI. MORTGAGE of a POLICY of ASSURANCE effected on the LIFE of the MORTGAGOR (*h*). PROVISO, that PRINCIPAL shall not be called in for a SPECIFIED TIME.

THIS MORTGAGE (*i*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the bor- Parties.

(*g*) See sect. 99 of the L. P. A. 1925.

(*h*) Notice in writing of the mortgage must be given to the assurance office under the Policies of Assurance Act, 1867, and inquiry should be made as to whether the office has notice of any prior charge on the policy. As to notice to the office regulating priorities, see *Re Lake*, [1903] 1 K. B. 151; *Re Weniger's Policy*, [1910] 2 Ch. 291. See also *West of England Bank v. Batchelor*, 51 L. J. Ch. 199; *Re Wallis*, [1902] 1 K. B. 719.

Notice to be
given of
mortgages of
life policies.

(*i*) Stamp, *ad valorem* on the amount secured. The provisions as to Stamp.

XXVI.
MORTGAGE OF
LIFE POLICY.

Testatum.

Covenant for
payment of
principal and
interest.

rower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, WITNESSETH as follows:—

1. In consideration of the sum of £—, now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him on the — day of — next, the sum of £—, with interest thereon in the meantime at the rate of — per cent. per annum; AND also so long after that day as any principal money shall remain owing under this security to pay to the lender interest thereon at the same rate, by equal half-yearly payments on the — day of — and the — day of — in every year.

Second
testatum.

Assignment of
policy.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby assigns unto the lender, ALL THAT policy of assurance on the life of the borrower, to which he the borrower is entitled in the — Life Assurance Society, for the sum of £—, dated the — day of —, 19—, and numbered —, at an annual premium of £—; AND ALSO the said sum of £— thereby assured, and all moneys to become payable under or by virtue of the said policy by way of bonus or otherwise (*k*): To HOLD all the premises unto the lender, subject to the proviso for redemption hereinafter contained.

Habendum.

Proviso for
redemption.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lender the said principal sum of £—, with interest for the same at the rate aforesaid, then the lender shall, upon the request and at the cost of the borrower, re-assign the premises to him, or as he shall direct.

Proviso that
money shall
not be called

4. PROVIDED ALWAYS, that if the borrower shall pay the interest on the said sum of £— half-yearly, or within thirty days after

keeping on foot the policy do not render any additional stamp duty necessary. The deed should be stamped at once: see Stamp Act, 1891, s. 118; 33 Sol. J. 3.

(*k*) For several policies, say,

"ALL THOSE several policies of assurance on the life and in the name of the borrower in the respective offices, for the respective sums, of the respective dates and numbers, and at the respective annual premiums mentioned and set forth in the schedule hereto, and all moneys assured by or to become payable thereunder respectively."

the same shall become due, and shall commit no breach of any of the covenants hereinafter contained, the lender shall not require payment of the said sum of £—— before the —— day of ——, 19——, unless the borrower shall previously depart this life, in which case all principal and other moneys hereby secured shall immediately become payable: PROVIDED ALSO that the borrower shall not be entitled to pay off the said sum of £——, or any part thereof, before the said —— day of ——, 19——, unless the lender shall go into possession, appoint a receiver, or take other steps to enforce this security (l).

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MORTGAGE OF
LIFE POLICY.

in for a
specified
time.

5. The borrower hereby covenants with the lender that the said policy is now valid and subsisting for the said sum of £—— (m), and that all premiums thereon have been duly paid down to the date of these presents, and that he the borrower will not do or suffer anything whereby the said policy (n) or any other policy to be effected as hereinafter mentioned may become void or voidable, or whereby the lender may be prevented from receiving the moneys to become payable thereunder, or any part thereof, but will regularly pay the premiums payable for keeping on foot every such policy, and from time to time deliver the receipt for the premium for the same for the current year to the lender within —— days after the same shall have become payable; AND that if any such policy shall become voidable, the borrower will immediately, at his own cost, do all things necessary for restoring and keeping on foot the same, and if such policy shall become void, will immediately, at his own cost, effect a new policy or policies on his life in the name or names of the lender in an office to be approved of by him, for the sum of £—— at the least (o); AND in case he shall at any time refuse, neglect, or omit to pay, produce, restore, or effect any such premium,

Covenants by
borrower that
policy is
valid and
subsisting;
to keep up the
policy, &c.

Power for
lender to
effect new

(l) The period for restricting redemption must be reasonable, and the provisos should be mutual: see *Morgan v. Jeffreys*, [1910] 1 Ch. 620.

(m) For several policies, say,
“each of the policies hereby assigned is now valid and subsisting for the sum mentioned in respect thereof in the said schedule.”

(n) For several policies, say, “any policy hereby assigned.”

(o) For several policies, say,
“for the sum payable under the void policy.”

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MORTGAGE OF
LIFE POLICY.

policy on
borrower's
default.

Costs of new
policy to be
added to
debt.

Power to
surrender
policy.

receipt, or policy within the times or in manner respectively aforesaid, it shall be lawful for but not obligatory upon the lender to pay the premium, or restore, or effect the policy to which any such default, refusal, neglect, or omission shall relate; AND the borrower will on demand repay to the lender all moneys which he shall disburse for any of the purposes aforesaid, with interest thereon at the rate aforesaid, until payment thereof; AND will do and concur in all acts to enable him to effect any such new or other policy as aforesaid; AND every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder, shall be a security for all the moneys intended to be hereby secured, and subject to the covenants and provisions herein contained in like manner as the premises hereby assigned.

6. The sale of any policy for the time being subject to this security under the statutory power in that behalf may be made by surrender to the office granting the same or otherwise.

IN WITNESS, &c.

XXVII. MORTGAGE of a POLICY of ASSURANCE effected
in the NAME of the MORTGAGEE; TWO SURETIES cove-
nant for PAYMENT of PRINCIPAL and INTEREST, and of
PREMIUMS on the POLICY.

Parties.

Recitals:
of agreement
for loan;

of policy of
assurance in
name of
lender;

THIS MORTGAGE (p), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the first part; [*surety*], of, &c., and [*surety*], of, &c. (hereinafter called "the sureties"), of the second part; and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the third part; WHEREAS the lender has agreed to lend to the borrower the sum of £— on having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing, and for the purpose of securing such repayment has effected an assurance in his own name on the life of the borrower, in the — Life Assurance Office, for the sum of £—, by a policy dated the — day of —, 19—, numbered —, and

(p) Stamp, *ad valorem* on amount secured: see *ante*, p. 81, note (i). It will not be necessary to give notice of the mortgage to the assurance office where the policy is effected in the name of the mortgagee.

under the annual premium of £—; AND WHEREAS the sureties have agreed to join in these presents as sureties for the borrower in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreements, and in consideration of the sum of £—, now paid to the borrower by the lender, with the privity of the sureties (the receipt and payment whereof the borrower and the sureties hereby respectively acknowledge), the borrower and sureties do, and as separate covenants each of them doth, hereby covenant with the lender that they the borrower and sureties, or some or one of them, will on the — day of —, 19—, pay to the lender the sum of £—, with interest in the meantime at the rate of — per cent. per annum; AND will also, as long after that day as any principal money shall remain due under this mortgage, pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the — day of — and the — day of — in every year.

2. IT IS HEREBY DECLARED that so long as any principal, interest, or other moneys shall remain due on the security of these presents, the said policy hereinbefore recited to have been effected, and all moneys recoverable or receivable under or by virtue of the same policy, shall stand charged with, and shall be redeemable only upon payment of the moneys for the time being so due and owing, and upon such payment shall, at the request of the borrower, his executors, administrators, or assigns, be assigned to him or them, or as he or they shall direct.

3. The borrower and sureties hereby jointly and severally covenant with the lender as follows, that is to say, that the said policy is not void nor voidable, and is free from incumbrances, and that the borrower will not do or suffer any act or thing whereby the said policy or any other policy to be effected as hereinafter mentioned may become void or voidable, but that the borrower and sureties, or some or one of them, will duly and regularly pay all premiums and sums of money payable for keeping on foot the said policy, and from time to time deliver or produce the receipt for every such premium or sum to the lender within — days after every such premium or sum shall have become payable: AND that if the said policy hereinbefore recited to have been effected shall become voidable, the borrower and sureties, or some or one of

XXVII.
MORTGAGE OF
LIFE POLICY
WITH
SURETIES.

of agreement
by sureties to
join.

Testatum.
Joint and
several cove-
nants by
borrower
and sureties
for payment
of principal
and interest.

Declaration
of charge.

Joint and
several cove-
nants by
borrower
and sureties
that policy
is valid;

to keep policy
on foot;

to restore
policy or
effect a new
policy in lieu

XXVII.
MORTGAGE OF
LIFE POLICY
WITH
SURETIES.

thereof if
voidable or
void.

Power for
lender to
effect new
policy on
default of
borrower.

Proviso that
sureties shall
be liable to
lender as
principals.

them, will immediately at their or his own cost do, or cause to be done, all things necessary for restoring and keeping on foot the same, and if the said policy shall become void, will immediately at the like cost effect a new policy or policies on the life of the borrower in the name or names of the lender in an office to be approved by him, for the sum of £—— at the least: AND in case there shall at any time be any default, refusal, neglect, or omission to pay, produce, restore, or effect any premium, receipt, or policy within the times, and in manner respectively aforesaid, it shall be lawful, but not obligatory on the lender to pay the premium or restore or effect the policy to which any such default, refusal, neglect, or omission shall relate; AND the borrower and sureties, or some or one of them, will on demand pay to the lender all moneys which he shall disburse for any of the purposes aforesaid with interest thereon at the rate aforesaid until payment thereof, and will do and concur in all acts to enable him to revive or effect any such new policy as aforesaid, and every new policy to be effected as hereinbefore provided, and the moneys to become payable thereunder shall be a security for all the moneys intended to be hereby secured, and subject to the covenants and provisions herein contained in like manner as the said policy hereinbefore recited to have been effected, and the moneys to become payable under the same.

4. PROVIDED ALWAYS, that although as between the borrower and the sureties, the sureties are only sureties for the borrower, nevertheless as between the sureties respectively and the lender, the sureties shall be taken to be principal debtors for all moneys intended to be hereby secured, so that they shall not, nor shall either of them, nor the executors, or administrators of them, or either of them, be released from their or his liability, under these presents, by reason of time being given to the lender. or by the release of any collateral securities for the moneys intended to be hereby secured, or by any other forbearance, act, or omission of the lender, or by any other matter or thing whereby the sureties, or either of them, or the executors, or administrators of them, would be so released, but for this provision.

5. [*Power to surrender policy, ante, p. 84, clause 6.*]

IN WITNESS, &c.

XXVIII. MORTGAGE of a LIFE ESTATE in FREEHOLDS (q) and Policy of ASSURANCE.

XXVIII.
MORTGAGE OF
LIFE ESTATE
IN FREE-
HOLDS, &c.

THIS MORTGAGE (r), made the — day of —, 19—, BETWEEN [mortgagor], of, &c. (hereinafter called "the borrower"), of the one part; and [mortgagee], of, &c., and [mortgagee], of, &c. (hereinafter called "the lenders"), of the other part; WHEREAS, under or by virtue of an indenture of settlement [trust instrument], dated, &c., and made between [parties], the borrower is beneficially entitled to the messuages, lands, and hereditaments described in the first schedule hereto as tenant for life in possession, without impeachment of waste, subject to certain charges and annuities specified in the second schedule hereto; AND WHEREAS by a vesting deed, dated, &c., and made, &c., the said hereditaments were conveyed to the borrower upon the trusts subsisting under the said settlement [trust instrument], and X. and Y. were therein named as the trustees of the said settlement for the purposes of the Settled Land Act, 1925; AND WHEREAS the borrower is entitled to a policy of assurance on his own life for the sum of £—— granted by the — Assurance Society, dated the — day of —, 19—, and numbered —, and under the annual premium of £——; AND WHEREAS the lenders have agreed to lend to the borrower the sum of £—— upon having the payment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing. NOW THIS DEED WITNESSETH as follows:—

Parties.

Recitals:
of title;
of borrower
to life estate
in lands;of title to
policy;of agreement
for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the borrower by the lenders out of moneys belonging to them on a joint account [covenant to pay principal and interest, see ante, p. 13].

Covenant to
pay principal
and interest.

2. For the consideration aforesaid, he the borrower, as beneficial owner, hereby assigns (s) unto the lenders, ALL that the

Second
testatum.

(q) A life estate in freeholds, being merely an equitable interest (see sect. 1 of the L. P. A. 1925) will be mortgaged in the same manner as before the Act. As to giving notice to the trustees of the settlement, see sect. 137, sub-sect. (2) (i).

(r) Stamp, *ad valorem* on amount secured.

Stamp.

(s) Formerly a mortgage of a life estate in realty was often taken by demise and the words "bargains and sells" were inserted in the operative part in order to give to the mortgagee an actual estate in the

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MORTGAGE OF
LIFE ESTATE
IN FREE-
HOLDS, &C.

annual income to arise during the life of the borrower from ALL and every the messuages, lands, and hereditaments situate in the parish of —, in the county of —, of or to which the borrower is seised or entitled for his life as aforesaid, which hereditaments and premises are particularly described with the several admeasurements thereof respectively (be the same more or less) in the first schedule hereto: To HOLD the same unto the lenders from the date of this deed during the life of and for all other the estate and interest (if any) of the borrower in the said premises, subject nevertheless to the several charges and annuities mentioned in the second schedule hereto written, and also subject to the proviso for redemption hereinafter contained.

Third
testatum.

Assignment
of policy of
life assurance (t).

3. For the consideration aforesaid, he the borrower hereby, as beneficial owner, assigns unto the lenders ALL THAT the said policy of assurance hereinbefore described, together with the sum of £— thereby assured, and all other moneys assured or to become payable by virtue thereof, and the full benefit thereof, To HOLD the said policy and premises hereby assigned unto the lenders, subject to the proviso for redemption following.

Proviso for
redemption.

4. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall pay to the lenders the said sum of £—, with interest for the same in the meantime at the rate of — per cent. per annum on the said — day of — next, without any deduction: then the lenders will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt if the borrower, his executors, administrators, or assigns, shall so require, execute at the cost of the person or persons

land without entry, instead of a mere *interesse termini*. But now sect. 149 of the L. P. A. 1925, enacts that—

“(1) The doctrine of *interesse termini* is hereby abolished.

“(2) As from the commencement of this Act all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the estate, interest, or powers of the grantor, from the date fixed for commencement of the term, without actual entry.”

An assignment, however, appears to be preferable to a demise in the present case.

(t) Notice must be given to the assurance office: see *ante*, p. 81, note (h).

requiring the same, a re-assignment, surrender, release, or transfer of the said premises hereby assigned or any of them (as may be required) unto the borrower, his executors, administrators, or assigns, or as he or they shall direct (*u*).

XXVIII.
MORTGAGE OF
LIFE ESTATE
IN FREE-
HOLDS, &c.

5. [*Covenant against registration, see Precedent III., ante, p. 17.*]

6. The borrower hereby covenants with the lenders that he the borrower will not do or suffer anything whereby the said policy hereby assigned, may become void or voidable, or the lenders may be hindered from receiving all or any of the moneys assured or to become payable by virtue thereof; AND that if the said policy shall become void, the borrower will immediately effect a new policy or policies on his life in the — Assurance Society, or in some other life assurance society to be approved by the lenders in the name of the lenders for a sum or sums not less in the whole than the sum of £——, and that every such new policy or policies, and the moneys to become payable under the same, shall be subject to the proviso for redemption hereinbefore contained, and to this present security in all respects, in like manner as the said existing policy of assurance, and the moneys to become payable by virtue thereof; AND that the borrower will, from time to time, pay the said annual premium of £—— and any other premiums or sums for the time being necessary for keeping on foot the said policy hereby assigned, or any policy to be effected as aforesaid on the day on which the same respectively ought to be paid, and forthwith deliver the receipt for the same to the lenders: AND will, on demand, pay to the lenders all moneys which shall be expended by them in keeping up the said existing policy, or in effecting or keeping up any new policy or policies in lieu thereof, with interest thereon at the rate aforesaid, from the time or respective times of the same having been expended, and that until such moneys shall be repaid with interest all and singular the premises hereby assigned, and the said existing, or any new policy or policies to be effected as aforesaid, and the moneys to become payable under the same, shall be charged with the pay-

Covenant by
borrower
to keep up
policy.

(*u*) Here may be inserted, if desired, a proviso for reduction of interest on punctual payment (*ante*, p. 14); or a proviso that the principal shall not be called in for a specified time (*ante*, p. 82).

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MORTGAGE OF
LIFE ESTATE
IN FREE-
HOLDS, &c.

Not to exercise powers without consent of lender.

Sale of policy may be made by surrender to the office.

[Saving of borrower's powers as tenant for life under the S. L. Act (x)].

ment thereof: AND further that he the borrower will not, without the consent in writing of the lenders so long as any money shall remain due on this security, execute any of the powers or authorities contained in the said indenture of settlement, or conferred by statute or otherwise, or do or concur in any other act whereby this security shall be in anywise prejudiced or affected.

7. IT IS HEREBY AGREED that any sale made under the statutory power in that behalf of any policy for the time being, subject to this security, may be made by surrender to the office granting the same or otherwise.

[8. Nothing herein contained shall affect the power of the borrower to exercise or consent to the exercise of any of the powers of leasing, sale, or exchange, or any other powers contained in the said recited indenture of settlement, or any of the powers vested in him by the Settled Land Act, 1925, or any Act amending or extending the same, which powers shall be exerciseable without any further consent or concurrence by or on the part

(x) A tenant for life cannot assign or release his powers under the Act (see S. L. A. 1925, s. 104 (1)), and where an assignment for value is made or comes into operation after the commencement of the S. L. A. 1925, "the consent of the assignee shall not be requisite for the exercise by the tenant for life of any of the powers conferred by this Act" (sect. 104, sub-sect. (4)); but by the proviso to this sub-section—

"(a) the assignee shall be entitled to the same or the like estate or interest in or charge on the land, money, or securities for the time being representing the land, money, or securities comprised in the assignment, as he had by virtue of the assignment in the last-mentioned land, money, or securities; and

"(b) if the assignment so provides or if it takes effect by operation of the law of bankruptcy, and after notice thereof to the trustees of the settlement, no investment or application of capital money for the time being affected by the assignment shall be made without the consent of the assignee, except an investment in securities authorised by statute for the investment of trust money; and

"(c) notice of the intended transaction shall, unless the assignment otherwise provides, be given to the assignee, but a purchaser shall not be concerned to see or inquire whether such notice has been given."

Unless it is desired to exclude the necessity of giving notice to the assignee of any intended transaction, this clause (8) may be omitted in reliance on the provisions of the Act.

of or notice to the lenders, and this security shall attach upon the life estate or interest of the borrower in all property which by means of any sale, exchange, or transposition of investments under any of such powers may from time to time be substituted for the said hereditaments, or any part thereof, and on the rents reserved on leases.]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XXVIII.
MORTGAGE OF
LIFE ESTATE
IN FREE-
HOLDS, &c.

XXIX. MORTGAGE *by a BUILDER of PROPERTY comprised in an AGREEMENT for several BUILDING LEASES. POWER for MORTGAGOR to WITHDRAW HOUSES from the SECURITY on PAYMENT of INSTALMENTS of LOAN.*

THIS MORTGAGE (y), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c., builder (hereinafter called “the borrower,” which expression shall also include persons deriving title under him or entitled to redeem this security), of the one part; and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part; WHEREAS, by an agreement, dated the — day of —, 19—, and made between [*lessor*], of the one part, and the borrower, of the other part, it was agreed that when and so soon as the messuages, or dwelling-houses, or buildings, thereafter agreed to be built, should be built, finished, and made fit for habitation to the satisfaction of the architect or surveyor for the time being of the said [*lessor*], and such architect or surveyor should have certified in writing to that effect, the said [*lessor*] would, by one or several leases as therein mentioned, demise unto the borrower the piece or parcel of land, situate at —, in the county of —, and therein particularly described, and the said messuages, or dwelling-houses and buildings to be built thereon, for the several terms of — years, to be computed from the — day of —, 19—, respectively, at such several yearly rents, with and subject to such exceptions, reservations, covenants, provisoes, and stipulations as are therein mentioned;

Parties.

Recitals:
of agreement
for building
lease or leases;

(y) Stamp, *ad valorem* on amount secured.

Stamp.

XXIX.
BUILDER'S
MORTGAGE OF
PROPERTY
COMPRISED
IN
AGREEMENT.

of commence-
ment of
buildings and
agreement for
loan.

Testatum.

Covenants by
borrower :

to pay prin-
cipal and
interest ;

to complete
buildings ;

to take up
leases.

AND the borrower thereby agreed with the said [*lessor*] to build and finish, fit for habitation, to the satisfaction of the said architect or surveyor, within the times and in the manner therein mentioned, — messuages, or dwelling-houses, and buildings, with proper outbuildings, as therein mentioned [*recite shortly any special stipulations as to the mode of granting leases which may be material as affecting the security*]; AND the agreement now in recital contained a power for the said [*lessor*], and his assigns, upon breach of any of the stipulations contained in the same agreement to re-enter upon the premises thereby agreed to be demised, or such part of the same whereof no such lease as aforesaid should have been actually granted, and for cesser of the same agreement as regards the whole or such part of the premises as should be so entered upon; AND WHEREAS, in pursuance of the hereinbefore recited agreement the borrower has commenced to build the said messuages and buildings on the said piece or parcel of ground so agreed to be demised as aforesaid, and has applied to the lender to lend to him the sum of £—— for the purpose of completing the said messuages or buildings, which he the lender has agreed to do upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender [*covenant for payment of principal and interest, ante, p. 22*].

2. The borrower hereby further covenants with the lender that he the borrower will, within the times and in manner mentioned in the hereinbefore recited agreement, complete and finish fit for habitation in all respects the said — messuages and buildings so agreed to be built on the piece or parcel of ground as aforesaid; AND will also, as soon as conveniently may be, at his own cost, perform and do all acts and things which may be necessary to entitle him to the lease or several leases by the hereinbefore recited agreement agreed to be granted to him: AND will immediately upon obtaining any such lease or leases execute a valid legal mortgage by a charge by deed expressed to be by way of legal mortgage or by a sub-demise, as the lender shall direct, of the premises comprised in such lease or leases, for such term or respective

terms, and with and subject to all such powers, covenants, conditions, and provisoes as the lender may reasonably require.

3. AND the borrower hereby further covenants with the lender to keep all messuages, buildings, and property upon the premises during the continuance of this security insured against loss or damage by fire in the sum of £—— at the least [*or*, to the full value thereof], in the —— Insurance Office, or some other fire insurance office to be approved by the lender, and to pay all premiums or sums from time to time payable for keeping up such insurance on [*or*, within —— days after] the first day on which every such premium or sum shall become payable, and on demand to produce to him the policy or policies of such insurance, and the receipt for every premium or sum payable in respect thereof, and that on the refusal or failure of the borrower to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender at any time thereafter to effect under the statutory powers in that behalf an insurance of the said messuages and buildings to an amount not exceeding the sum of £—— [*or*, to the full value thereof].

4. PROVIDED ALWAYS, and it is hereby agreed that if the borrower shall at any time neglect or omit to proceed uninterruptedly with the finishing of the said messuages and buildings so agreed to be built as aforesaid, in accordance with the provisions and stipulations in that behalf in the hereinbefore recited agreement contained, and Mr. ——, of, &c., or some other competent surveyor, shall in writing certify to that effect, or if the borrower shall become bankrupt or have a receiving order made against him, or enter into any composition or arrangement for the benefit of his creditors, or if a receiver shall be appointed of the mortgaged premises, or if the mortgaged premises, or any part thereof, or any chattels thereon, shall be taken in execution, or if any chattels thereon shall be taken under a distress for rent, then, and in any such case, it shall be lawful for the lender to enter upon, proceed with, and complete the same messuages and buildings, and he shall be entitled to recover all moneys which he shall expend for that purpose from the borrower by any action or actions or proceedings, or to prove for the same against his estate as may

XXIX.
BUILDER'S
MORTGAGE OF
PROPERTY
COMPRISED
IN
AGREEMENT.

Covenant by
borrower to
insure.

Power for
lender to
complete
messuages,
&c. on default
of borrower
in proceeding
with works.

XXIX.
BUILDER'S
MORTGAGE OF
PROPERTY
COMPRISED
IN
AGREEMENT.

Power for
borrower to
withdraw
houses from
the security
on payment
of instal-
ments.

be thought expedient, with interest for the same at the rate of — per cent. per annum; AND all moneys so expended with interest shall be deemed to be covered by and included in this security.

5. PROVIDED ALWAYS, that, subject and without prejudice to the power of sale, or any other remedy subsisting under or by virtue of these presents, it shall be lawful for the borrower from time to time, upon giving to the lender six calendar months' previous notice in writing of his intention in that behalf, to withdraw from this security any of the said leases and the premises therein respectively comprised upon payment of such sum of money not being less in amount than *three-fourths* of the value estimated at the cost price in materials and labour of the messuage or buildings comprised in such lease as the borrower shall in such notice specify; AND upon payment also of all interest, and costs, charges, and expenses (if any), for the time being due on the security of these presents; AND upon receipt of all moneys to be paid for or upon such withdrawal, the lender will, at the cost of the borrower, assign, surrender, or otherwise convey the premises to be withdrawn to such person or persons and in such manner in all respects as the borrower shall direct.

Covenant
against
registration.

6. The borrower, for himself and his assigns, hereby covenants with the lender that, during the continuance of this security, or of any legal mortgage to be executed as aforesaid, no person or persons or corporation shall be registered under the Land Registration Act, 1925, as proprietor or proprietors of any leasehold hereditaments comprised in this security or to be comprised in any such legal mortgage as aforesaid, or any part thereof, without the consent in writing of the lender, and that the costs incurred by the lender in lodging from time to time a caution against such registration, and after any person or persons or corporation shall have been registered as proprietor or proprietors of the reversion expectant on the term of years to be granted by any lease under the hereinbefore recited agreement in registering notice of such term pursuant to the said Act, and after the power of sale conferred by these presents, or by any such legal mortgage as aforesaid, or by the statute in that behalf, shall have become exerciseable in registering the lender as proprietor under the said Act of the hereditaments comprised in this security, or to be com-

prised in any such legal mortgage as aforesaid, shall be deemed to be costs properly incurred under these presents.

7. [*Clause preserving mortgagee's right of consolidation, ante, p. 12.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXIX.
BUILDER'S
MORTGAGE OF
PROPERTY
COMPRISED
IN
AGREEMENT.

XXX. MORTGAGE of a LEASEHOLD PUBLIC-HOUSE to a FIRM of BREWERS, to SECURE a PRESENT ADVANCE, and the BALANCE of an ACCOUNT CURRENT for FUTURE ADVANCES and GOODS to be SUPPLIED. VARIATIONS where the MORTGAGEES are not BREWERS (z).

THIS MORTGAGE (a), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c., licensed victualler (hereinafter called "the borrower"), of the one part, and [*mortgagee*] and [*mortgagee*], carrying on the business of brewers at —, in the county of —, under the style or firm of — & Co. (hereinafter called "the lenders"), of the other part; WHEREAS by an indenture of lease, dated the — day of —, 19—, and made between [*parties*], the said [*lessor*] demised [*describe parcels*] unto the borrower from the — day of —, for the term of — years, at the rent and subject to the lessee's covenants and conditions therein contained; AND WHEREAS the lenders have agreed to lend to the borrower the sum of £—, upon having the repayment thereof, with interest thereon at the rate hereinafter mentioned [and also of any other sum or sums of money from time to time

Parties.

Recitals:
of lease;
of agreement
for loan.

(z) This precedent can be used in the case of a loan by persons other than a firm of brewers by making the variations referred to in the notes. The register of licenses to be kept by the clerk of the licensing justices of the district should be inspected before any advance is made.

(a) Stamp, *ad valorem*, of sufficient amount to cover actual and future advances: see Stamp Act, 1891, s. 88, under which (sub-s. (1)) a security for future advances or current account, if limited, is to be charged with duty as a security for the limited amount; but (sub-s. (2)) where the total amount is unlimited, the security is to be available for such amount only as the *ad valorem* duty impressed thereon extends to cover: see *Suffield v. I. R. Commissrs.*, [1908] 1 K. B. 865.

Stamp.

XXX.
MORTGAGE OF
PUBLIC-HOUSE
TO A FIRM
OF BREWERS.

hereinafter to be advanced to or on account of the borrower by the lenders, or owing to them in account current or stated, for goods supplied or otherwise, from the borrower, with interest on any such sums of money so advanced or owing at the rate hereinafter mentioned] (*h*), secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

Covenant for
payment of
principal and
of further
advances, and
amount due
on account
current, and
interest.

1. In pursuance of the said agreement, and in consideration of the sum of £—, now paid to the borrower by the lenders (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders that he the borrower will, on the — day of — next, pay to the lenders the sum of £—, with interest for the same in the meantime at the rate of — per cent. per annum [and will (*b*), on such — day of — or — day of — as shall happen next after the time of the same respectively being advanced or becoming payable, pay to the lenders every other sum of money which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them by the borrower in account current or stated as aforesaid, with interest thereon at the rate of — per cent. per annum, from the time of the same respectively being advanced or becoming payable]; AND ALSO that if the said principal sum of £— [or any sum which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them from the borrower in account current or stated as aforesaid] (*b*) shall remain unpaid after the day on which the same is hereinbefore covenanted to be paid [respectively], then so long as the same, or any part thereof, shall remain unpaid, the borrower will pay to the lenders interest for the same, or so much thereof as shall for the time being remain unpaid [respectively] at the rate aforesaid, by equal half-yearly payments, on the — day of — and the — day of — (*c*).

Demise of
public-house.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby, as beneficial owner, demises unto the lenders all the said public-house and premises by the hereinbefore recited indenture of lease of the — day of

(*b*) Where the mortgage is not to brewers omit the words in brackets.

(*c*) Where the mortgage is not to brewers this form of covenant for payment of principal and interest may be adopted, omitting the words in brackets, or, if preferred, the form in Precedent III., *ante*, p. 13, may be used.

—, 19—, demised, together with the rights, easements, and appurtenances thereunto belonging, and all fixtures and fittings, whether landlord's or tenant's (except trade machinery and personal chattels within the meaning of the Bills of Sale Acts), now or hereafter during the term for which the same are hereby demised to be in or about the said public-house and premises: To HOLD all the premises comprised in the said indenture of lease, and the said fixtures and fittings hereby demised unto the lenders for all the residue now to come of the said term of — years, less the last day thereof, subject to the proviso for redemption hereinafter contained.

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TO A FIRM
OF BREWERS.

Habendum.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower hereby, as beneficial owner, assigns unto the lenders, first, ALL the goodwill (*d*) of the business carried on upon the premises hereby demised, and the benefit of all licences held in connection therewith; and secondly, all money to which the borrower, or his assigns, may become entitled under the Licensing (Consolidation) Act, 1910, or any Act amending or re-enacting the same, as compensation (*e*) for the non-renewal of such licences as aforesaid: To HOLD the same unto the lenders subject to the proviso for redemption following.

Assignment
of goodwill,
&c.

4. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the borrower shall on the said — day of — next pay to the lenders the said sum of £—, with interest for the same from the date of these presents, at the rate of — per cent. per annum [and shall on such — day of — or — day of — as shall happen next after the time of the same respectively being advanced or becoming owing as aforesaid, pay to the lenders every other sum of money which may hereafter be advanced to or on account of the borrower by the lenders, or be owing to them in account current or stated, or otherwise, from the borrower as aforesaid, with interest on such sums of money so advanced or owing from the time of the same respectively being advanced and becoming payable at the rate aforesaid, without any deduction] (*f*),

Proviso for
redemption.

(*d*) See *Re Bennett*, [1899] 1 Ch. 316.

(*e*) See Licensing Consolidation Act, 1910, s. 20.

(*f*) Where the mortgage is not to brewers the words in brackets may be omitted.

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PUBLIC-HOUSE
TO A FIRM
OF BREWERS.

then the lenders shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises or any part or parts thereof unto the borrower, or as he shall direct.

Covenants by
the borrower

5. The borrower hereby covenants with the lenders that during the continuance of this security, he the borrower, his successors in business, or assigns—

to repair;

(i) Will keep all the demised premises in such a state of repair and insurance as is required by the covenants in that behalf in the said lease contained.

not to remove
fixtures, &c.;

(ii) Will not remove the said fixtures and fittings, or any of them, without the consent in writing of the lenders.

to reside on
the premises;

(iii) Will reside in the said public-house, and personally carry on the said business thereon.

to purchase
malt liquors,
&c. of the
lenders (g);

[(iv) Will purchase all malt liquors consumed or sold upon or sent out from the said premises from the lenders or their assigns, provided that they shall be willing to sell the same to the borrower at current market prices, and the fact of any barrel, other than such as are supplied by the lenders or their assigns, being upon the premises (whether empty or not) shall be conclusive evidence of a breach of this covenant.]

not to assign,
&c. without
consent;

(v) Will not assign or demise, nor part with possession of the said public-house, without the consent in writing of the lenders or their assigns.

to take out
licences and
not to forfeit
licences;

(vi) Will take out annually (or oftener if necessary) proper licences for carrying on the said trade, and neither he nor they will do or suffer anything whereby the existing licences, or any licences for the time being in force, may be forfeited or the renewal thereof refused.

to insure;

(vii) Will insure and keep insured against loss or forfeiture all licences for the time being in force, in the full value thereof, in the name of the lenders or their assigns in an office to be approved of by them, and will on demand produce to them the

(g) Where the mortgage is not to brewers this sub-clause will be omitted.

policy or policies for such insurances, and the receipts for premiums or other moneys payable in respect thereof, and in case the borrower, his successors in business, or assigns, shall make default in that behalf, the lenders or their assigns may pay all premiums and moneys from time to time payable for keeping such policy or policies on foot, and that all moneys expended by the lenders or their assigns under this provision shall be deemed to be properly paid by them.

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MORTGAGE OF
PUBLIC-HOUSE
TO A FIRM
OF BREWERS.

(viii) Will, at the request of the lenders, deliver possession of the premises to such person or persons as may be appointed by the lenders, and will indorse and transfer the said licences to such person or persons, and sign and give all notices required for the legal transfer of such licences or for obtaining new licences to such person or persons as the case may require, and will at the like request withdraw from the books of the excise the name or names of the borrower, his assigns or successors in business, as carrying on trade on the said premises.

to deliver up
the premises
and transfer
licences to
appointee of
lenders.

6. The borrower hereby constitutes and appoints [A., B., and C.], all members of the said firm of — & Co. (*h*), and each of them, or his or their substitute or substitutes, to be the true and lawful attorneys and attorney for him and in his name to make and execute all such transfers of the said licences or apply for renewals of such licence or licences as aforesaid, and to do all such other acts and take all such steps as may be necessary for rendering valid and effectual the transfer or renewal of any such licence or licences as aforesaid, and for withdrawing the name of the borrower from the books of the excise and from the register of licences as carrying on trade on the said premises, as the borrower might or could do or might or could have done.

Power of
attorney.

7. IT IS HEREBY AGREED that the statutory power of sale vested in the lenders by virtue of these presents shall become immediately exerciseable without the necessity of giving notice to the borrower (1) if any interest shall be in arrear for — days after the day hereby appointed for the payment thereof; (2) if the borrower shall become bankrupt, or have a receiving order made against

Extension of
statutory
power of sale.

(*h*) Where the lenders are not a firm of brewers, say,
“appoints the lenders.”

XXX.
MORTGAGE OF
PUBLIC-HOUSE
TO A FIRM
OF BREWERS.

him, or shall enter into any arrangement or composition with his creditors; or (3) if the mortgaged premises or any chattels thereon belonging to the borrower, or other person or persons for the time being entitled to the equity of redemption, shall be taken in execution: AND any sale under the statutory power may be made either subject to or free from any incumbrance not binding the lenders.

Power for
lenders to
carry on the
business, &c.,

8. The lenders may at any time hereafter enter upon the premises and carry on the said business either personally or by a sub-manager, and may demise the premises with or without the benefit of the licences for any term not exceeding the residue unexpired of the term granted by the said recited lease, and may accept surrenders of leases and tenancies upon such terms as they may think proper, and make allowances to and arrangements with tenants, and may pay on behalf of the borrower all moneys payable by the lessee under or in respect of the said recited lease, and all rates, taxes, and other outgoings, and may expend such moneys for repairs, insurance, licences, or otherwise, as they may deem expedient: AND all moneys so paid or expended, with interest thereon at the rate of — per cent. per annum from the time of expenditure, shall be repaid by the borrower on demand, and in the meantime shall be charged on the mortgaged premises.

and pay
outgoings.

Application
of rents.

9. IT IS HEREBY AGREED that all rents and profits received hereunder by the lenders shall be applied, first, in payment of all costs and expenses incurred by them hereunder; secondly, in payment of any outgoings affecting the premises; thirdly, in payment of interest under this security; and the surplus (if any) may, at their option, either be applied in reduction of the principal moneys hereby secured, or may be deposited in a bank, or be paid to the borrower, his executors, administrators, or assigns.

Application
of compensa-
tion and
policy
moneys.

10. All moneys received by the lenders as compensation in respect of the refusal of the licensing authority to renew the licences, or any of them, or in respect of any policy to be effected hereunder, shall be applied by them, first, in the payment of the costs incurred by them hereunder; secondly, in or towards payments of the moneys owing on this security, and subject thereto shall be held in trust for the borrower and his successors in business.

Interpreta-
tion clause.

11. PROVIDED ALWAYS, that in these presents, unless the contrary appears, the expression "the borrower" shall mean and

include the said [*mortgagor*], his executors, administrators, successors in business, and assigns; and the expression "the lenders" shall mean and include the said firm of — & Co. and their successors in business, and assigns (*i*).

IN WITNESS, &c.

XXX.
MORTGAGE OF
PUBLIC-HOUSE
TO A FIRM
OF BREWERS.

XXXI. BILL OF SALE OF PERSONAL CHATTELS *by way*
of MORTGAGE (*k*).

THIS INDENTURE (*l*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*mortgagee*], of, &c. (hereinafter called "the lender"), of the other part, WITNESSETH as follows:—

Parties (*m*).

Testatum.

1. In consideration (*n*) of the sum of £— now paid (*o*) to the

Assignment
of chattels

(*i*) Where the lenders are not a firm of brewers, say,
"the said [*mortgagees*], their executors, administrators, and assigns,"

or the interpretation of the expression "mortgagees" may be omitted in reliance on sect. 114 of the L. P. A. 1925.

(*k*) As to bills of sale, see the Bills of Sale Acts, 1878, 1882, and the note in Key & Elphinstone, 11th ed. vol. ii. p. 158. In this precedent the statutory form of a bill of sale is closely followed, the variations and additions being given in brackets: that form expressly provides for variations only as regards the statement of the consideration, the rate of interest, and the stipulated time or times for payment, and also for the insertion of special stipulations or terms as to insurance, payment of rent, or otherwise. As a bill of sale given as a security is void (Bills of Sale Act, 1882, s. 9) unless "in accordance" with the statutory form, it will be advisable to make no variations or additions except as expressly provided: see *Ex parte Stanford*, L. R. 17 Q. B. D. 259, 270; *Thomas v. Kelly*, 13 App. Cas. 506, 519; *Shears and Sons, Ltd. v. Jones*, 92 L. J. Ch. 28; [1922] 2 Ch. 802; *National Provincial, &c. Bank v. Lindsell*, 91 L. J. K. B. 196; [1922] 1 K. B. 21. A "letter of trust" does not require registration as a bill of sale: see *In re Allester*, 91 L. J. Ch. 797; [1922] 2 Ch. 211.

(*l*) Stamp, *ad valorem* on amount secured.

(*m*) As to the names and descriptions of parties, see *Simmons v. Woodward*, [1892] A. C. 100; *Altree v. Altree*, [1898] 2 Q. B. 267.

(*n*) As to the consideration being truly stated, see *Kinnersley v. Payne* (1909), 100 L. T. 229; *D'Usez v. Traffics and Discoveries, Ltd.*, 40 T. L. R. 441.

(*o*) As to the words "now paid," see *Henshall v. Widdison*, 130 L. T. Consideration.

XXXI. BILL
OF SALE OF
PERSONAL
CHATELS.

by way of
security.

Agreements
by borrower
for payment
of principal
and interest;

borrower by the lender (the receipt of which is hereby acknowledged) (*p*), he the borrower hereby (*q*) assigns unto the lender, his executors, administrators, and assigns, ALL and singular the several chattels and things specifically described in the schedule hereto annexed (*r*), by way of security for the payment of the sum of £——, and interest thereon at the rate of —— per cent. per annum.

2. The borrower doth hereby agree and declare that he will duly pay to the lender the principal sum aforesaid, together with the interest then due, by equal [*monthly*] payments of £——, on the —— day of —— [every month, the first such payment to be made on the —— day of ——, 19——] (*s*).

607. If the consideration is less than 30*l.* the bill of sale will be void under sect. 12 of the Act of 1882: *Davis v. Usher*, L. R. 12 Q. B. D. 490; *Darlow v. Bland*, [1897] 1 Q. B. 125. See also *London and Provinces Discount Co. v. Jones*, [1914] 1 K. B. 147. The bill must be duly attested and registered under the Act of 1878 (s. 8) within seven days after its execution. And see, as to the form of attestation, sect. 9; *Parsons v. Brand*, 25 Q. B. D. 110; *Sims v. Trollope*, [1897] 1 Q. B. 24; *Coates v. Moore*, [1903] 2 K. B. 140.

(*p*) The receipt must be acknowledged: see *Davies v. Jenkins*, [1900] 1 Q. B. 133.

(*q*) The borrower must not assign as “beneficial owner”: see *Ex parte Stanford, ubi sup.*

(*r*) The chattels must be described in the schedule, not in the body of the deed: *Thomas v. Kelly, ubi sup.*; *Seed v. Bradley*, [1894] 1 Q. B. 319. As to what may be included in the schedule, see *Cochrane v. Entwistle*, 25 Q. B. D. 116; *Swanley Coal Co. v. Denton*, [1906] 2 K. B. 873. As to the inclusion of after-acquired chattels other than substituted fixtures, plant, or trade fixtures mentioned in schedule 6 (2) of the Act of 1882, see *Kelly v. Kellond*, 20 Q. B. D. 569; *Thomas v. Kelly, ubi sup.* And see, as to specific description, *Roberts v. Roberts*, 13 Q. B. D. 794; *Davidson v. Carlton Bank*, [1893] 1 Q. B. 82; *Davies v. Jenkins*, [1900] 1 Q. B. 133.

(*s*) A fixed day for payment must be named. The entire principal, with agreed interest, may be made payable on a fixed date (*Watkins v. Evans*, 18 Q. B. D. 386), but a bill of sale will be void if the money is payable on demand (*Hetherington v. Groome*, 13 Q. B. D. 789), or within a certain time after demand (*Sibley v. Higgs*, 15 Q. B. D. 619), or the payment depends on an event which may or may not happen: *Hughes v. Little*, 18 Q. B. D. 32; see also *De Braam v. Ford*, [1900] 1 Ch. 142; *Rosefield v. Provincial Union Bank*, [1910] 2 K. B. 781.

The instalments may be made payable quarterly or half-yearly, if

Date of
payment.
Interest.

3. The borrower doth hereby agree with the lender as follows:—

XXXI. BILL
OF SALE OF
PERSONAL
CHATTELS.

(1) That he the borrower will, during the continuance of this security, pay all rents, rates, taxes, and outgoing, and observe and perform all covenants, conditions, and stipulations which ought to be paid, observed, or performed by the tenant or occupier of the said messuage and buildings, or of any other place or places to or upon which the chattels and things comprised in this security, or any of them, may from time to time be removed or placed, and will on demand produce to the lender the last receipts for the payment of such rents, rates, taxes, and outgoing as aforesaid.

to observe
conditions of
tenancy;

(2) That he will not remove from the said messuage and buildings any of the said chattels and things without the consent of the lender, except such as are worn out or removed for the purpose of repairs, and will replace any chattels or things so worn out by others of equal or greater value (t).

not to remove
chattels;

(3) That he will keep the said chattels and things in good order and repair, and also insured against loss or damage by fire in the sum of £—— at the least [or, to the full value thereof], in the — Insurance Co., or some other insurance office to be approved of by the lender, and will pay all premiums and sums from time to time payable for keeping up such insurance on [or, within — days after] the first day on which every such premium or sum shall become payable, and will on demand produce to the lender the policy or policies of such insurance, and the receipt for every

such is the arrangement; and the rate need not be calculated by the year, e.g., it may be (say) one per cent. per month or 1s. per 1l. per month: *Lumley v. Simmons*, 34 Ch. D. 698; *Rosefield v. Provincial Union Bank*, [1910] 2 K. B. 781.

The statutory form expressly permits variations as to the stipulated time or times for payment of principal and interest, but the principal and interest are in practice usually made payable by monthly or other instalments. It must be possible to ascertain from the bill of sale what the rate of interest is: *Myers v. Elliott*, 16 Q. B. D. 526. Interest made payable "at the rate of 17l. 10s. for three years" is bad: *Blankenstein v. Robertson*, 24 Q. B. D. 543.

All the following clauses, with the exception of the saving clause at the end of clause 4, are variations of or additions to the statutory form. Variations.

(t) See, as to this provision, *Seed v. Bradley*, [1894] 1 Q. B. 319; *Coates v. Moore*, [1903] 2 K. B. 140.

**XXXI. BILL
OF SALE OF
PERSONAL
CHATELS.**

premium or sum payable in respect thereof, and that on the refusal or failure of the borrower to produce any such policy or receipt in pursuance of this covenant, then it shall be presumed that no insurance is being kept up by or on behalf of the borrower in accordance with this mortgage, and it shall be lawful for the lender at any time to effect under the statutory powers in that behalf an insurance of the said chattels and things to an amount not exceeding the sum of £—— [or, to the full value thereof].

to permit
lender to
inspect
chattels;

(4) That it shall be lawful for the lender and his agents, at all reasonable times during the continuance of this security, to enter into and upon the said messuage and buildings, and to inspect the state and condition of the said chattels and things, and to take schedules or inventories thereof, and to give notice to the borrower of any defect or want of repair thereof, and that the borrower will thereupon immediately make good and amend such defect or want of repair.

and to repair
on notice;

power for
lender to
repair, &c.
on default.

(5) That if the borrower shall refuse, neglect, or fail to make good and amend such defect or want of repair within —— days after such notice as aforesaid, it shall be lawful for the lender to make good or amend the same without prejudice to his other remedies, and that all costs and expenses paid or incurred by him of and incident to making good or amending such defect or want of repair shall be added to the moneys hereby secured and charged upon the chattels and things comprised in this security, with interest thereon at the rate, and payable at the times and in manner, aforesaid, to be computed from the time or respective times of such costs and expenses having been paid or incurred respectively.

Power to
seize in
certain
events (u),

4. PROVIDED ALWAYS, that if the borrower shall make default in payment of the said sum of £——, or the interest thereof, at the time herein provided for payment, or in the performance of any covenant or agreement herein contained and necessary for maintaining this security, or during the continuance of this security shall become a bankrupt, or suffer the goods hereby

(u) The events and defaults here enumerated on which the power of seizure is to arise closely correspond with those mentioned in sect. 7 of the Act of 1882. This appears to be the most prudent course, especially when chattels form the only or principal security for the loan.

assigned, or any of them, to be distrained for rent, rates, or taxes, or shall fraudulently either remove or suffer to be removed the said goods, or any of them, from the premises upon which they may be, or shall without reasonable excuse (x) neglect or refuse, upon demand in writing by the lender to produce to him his last receipts for rent, rates, or taxes, or if execution shall during the continuance of this security be levied against the goods of the borrower under any judgment at law, then, and in any such case, all principal moneys hereby secured, and for the time being remaining unpaid, together with all interest up to the time of such default or event as aforesaid, shall immediately become payable without the necessity for any notice or demand of payment whatsoever, and it shall be lawful for the lender at any time after any such default or event as aforesaid, by himself or his agents or servants, to enter into and upon the said messuage and buildings or other the place or places to or in which the said chattels and things comprised in this security, or any of them, may have been removed or may happen to be, and to seize and take possession of the said chattels and things, or any of them: AND at any time after the expiration of five days from such seizure, without the necessity for any notice or demand of payment whatsoever, to sell all or any of such chattels and things either by public auction or private contract, with powers to buy in and rescind or vary any contract for sale, and to resell without being answerable for loss, and to give effectual receipts for the purchase-money, and to deliver any chattels or things sold to the purchaser or respective purchasers thereof, or as he or they may direct, and generally to do all acts and things which may be necessary or expedient for effectuating such sale: AND it is hereby agreed that the lender shall apply the moneys to arise from any such sale as aforesaid, in the first place, in payment of all costs and expenses of and incident to such sale or otherwise incurred in relation to this security, and in the next place in or towards the payment and satisfaction of all principal, interest, and other moneys for the time being due under this security, and shall pay the surplus (if

XXXI. BILL
OF SALE OF
PERSONAL
CHATTELS.

and to sell;

Application of
proceeds of
sale.

(x) Where the rent was only a few days overdue, and had not been demanded, it was held that the grantor of a bill of sale had a "reasonable excuse" for not producing the receipt: *Ex parte Cotton*, 11 Q. B. D. 301; *Ex parte Wickens*, [1898] 1 Q. B. 543. Reasonable excuse.

XXXI. BILL
OF SALE OF
PERSONAL
CHATTELS.

Saving clause.

Interpreta-
tion clause.

any) to the borrower, or as he shall direct]: PROVIDED ALWAYS that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the lender for any cause other than those specified in sect. 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

[5. PROVIDED LASTLY, that all rights and obligations of the borrower under or by virtue of these presents shall extend to his executors, administrators, and assigns, and all powers, rights, and obligations of the lender under or by virtue of these presents shall extend to his executors, administrators, and assigns.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXXII. SUB-MORTGAGE *or* MORTGAGE of a MORTGAGE
DEBT *and* the SECURITY for the same (y).

Parties.

THIS SUB-MORTGAGE (z), made the — day of —, 19—,
BETWEEN [*mortgagor*], of, &c. (hereinafter called “the bor-
rower,” which expression, where the context so admits, shall also

(y) As to sub-mortgages, see sect. 88 of the L. P. A. 1925 (relating to the effect of sale by a mortgagee of the fee simple), sub-sect. (5) of which provides as follows:—

“In the case of a sub-mortgage by sub-demise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.”

As to a sub-mortgage by sub-demise of a term (less a nominal period) itself limited out of a leasehold reversion, see sub-sect. (5) of sect. 89 of the Act.

As to sub-mortgages subsisting immediately before the commencement of the L. P. A. 1925, see Parts VII. and VIII. of the first schedule to the Act.

As to trustees lending on a sub-mortgage, see *Smethurst v. Hastings*, 30 Ch. D. 490; *Chapman v. Browne*, [1902] 1 Ch. 785.

Stamp.

(z) Stamp, *ad valorem* on amount secured.

include persons deriving title under him or entitled to redeem this security), of the one part, and [mortgagee], of, &c. (hereinafter called "the lender"), of the other part; WHEREAS by an indenture of mortgage dated the — day of —, 19—, and made between [A. B.], of the one part, and the borrower, of the other part, the hereditaments hereinafter described were demised unto the borrower, without impeachment of waste, for a term of three thousand years to commence from the date thereof, by way of mortgage, for securing the repayment to the borrower of the sum of £— and interest at the rate of — per cent. per annum; AND WHEREAS the said sum of £— still remains owing to the borrower on the security of the said indenture of mortgage, together with arrears of interest thereon amounting to the sum of £— [or, "but all interest thereon has been paid up to the date of these presents"]. AND WHEREAS the lender has agreed to lend to the borrower the sum of £— upon having the repayment of the same, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

XXXII. SUB-MORTGAGE.

Recitals:
of mortgage;

of state of
mortgage
debt;

of agreement
for loan.

Testatum.

1. In consideration of the sum of £— now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants [*covenant for payment of principal and interest, ante, p. 22.*]

Covenant for
payment of
principal and
interest.

2. For the consideration aforesaid the borrower, as beneficial owner, hereby assigns unto the lender the said principal sum of £— owing on the security of the said indenture as aforesaid; AND all interest now due and henceforth to accrue due thereon, and the benefit of all securities for the same and of all powers (including the statutory power of sale) and remedies thereby conferred [together with full power for the lender, in the name of the borrower, or otherwise to demand, sue for, receive, and give

Second
testatum.
Assignment
of mortgage
debt and
security.

Power of
attorney (a).

(a) Except in cases which are not within sect. 25 (6) of the Judicature Act, 1873, e.g., where the assignment is not of a definite sum (see *Jones v. Humphreys*, [1902] 1 K. B. 10), a power of attorney is not necessary. As to what assignments are "absolute" within that section, see *Burlinson v. Hall*, 12 Q. B. D. 347; *Tancred v. Delagoa Bay Rly. Co.*, 23 Q. B. D. 239; *Durham Brothers v. Robertson*, [1898] 1 Q. B. 765; *Hughes v. Pump House Hotel Co.*, [1902] 2 K. B. 190. Express notice in writing must be given to the original mortgagor, of whom inquiries should be

XXXII. SUB-MORTGAGE.

Habendum.

Third
testatum.
Sub-demise.

Proviso for
redemption

Proviso that
lender
shall not be
bound to
enforce
security.

effectual discharges for the said principal sum and interest, or any part thereof respectively, and to settle all accounts in respect thereof]: To HOLD all the premises hereby assigned unto the lender, subject to the proviso for redemption hereinafter contained.

3. For the consideration aforesaid the borrower hereby, as beneficial owner, demises unto the lender, ALL THOSE, &c. [*describe parcels*], and all other, if any, the hereditaments comprised in the said indenture of mortgage, To HOLD unto the lender, without impeachment of waste, henceforth for all the residue now unexpired of the said term of three thousand years granted by the said indenture of mortgage, except the last day thereof, subject to such right or equity of redemption as is now subsisting therein by virtue of the said indenture of mortgage and also to the proviso for redemption hereinafter contained.

4. PROVIDED ALWAYS, that if the said sum of £——, with interest thereon at the rate aforesaid, shall be paid on the —— day of —— in pursuance of the covenant in that behalf hereinbefore contained, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises unto the borrower or as he shall direct, but as to the said hereditaments, subject to such right or equity of redemption as shall for the time being be subsisting therein under or by virtue of the hereinbefore recited indenture of mortgage.

5. [*Covenant against registration, ante, p. 11.*]

6. PROVIDED ALWAYS, and it is hereby agreed that it shall not be obligatory on the said lender to demand or require payment of, or institute, maintain, or do any act or thing for the recovery of, the said principal sum and interest hereby assigned, or any part thereof, nor shall he be responsible for any loss which may be occasioned by his omitting or neglecting to enforce any rights or remedies in respect of the said principal sum and interest, or any part thereof.

made as to the state of the accounts: see *Bateman v. Hunt*, [1904] 2 K. B. 530. As to the effect of notice given by equitable sub-mortgagees, see *Hopkins v. Hemsworth*, [1898] 2 Ch. 347.

7. PROVIDED ALWAYS, that the receipt in writing of the lender shall be a sufficient discharge for any moneys arising under the said indenture of mortgage, or under the statutory power of sale thereby conferred.

XXXII. SUB-MORTGAGE.

Receipt clause.

8. AND the borrower hereby covenants with the lender that the principal sum of £—— [together with arrears of interest thereon amounting to the sum of £——] is now due and owing to the borrower on the security of the said indenture of mortgage.

Covenant that mortgage debt is due.

IN WITNESS, &c.

XXXIII. MORTGAGE of a LEGACY. VARIATION (*in notes*)
where the MORTGAGE is of a REVERSIONARY UNDIVIDED SHARE in GENERAL PERSONAL ESTATE.

THIS MORTGAGE (*b*), made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower”), of the one part, and [*mortgagor*], of, &c. (hereinafter called “the lender”), of the other part; WHEREAS [*testator*], of, &c., deceased, the father of the borrower, by his will dated the —— day of ——, 19—, bequeathed unto each of his children the sum of 1,000*l.*, to be payable when such children should respectively attain the age of twenty-one years (*c*), and appointed [*executors*], executors of his said will; AND WHEREAS the said [*testator*] died on the —— day of —— without having revoked or altered his said will, which was duly proved by the said [*executors*], on the —— day of ——, in the Principal Probate Regis-

Parties.

Recital of will bequeathing legacy.

Of death of testator and probate of will;

(*b*) Stamp, *ad valorem* on amount secured.

Stamp.

(*c*) Or, “bequeathed unto [*trustees*] all his personal estate whatsoever and wheresoever, upon trust [subject to and after payment thereof of his debts, funeral and testamentary expenses and the legacies thereby, or by any codicil thereto, bequeathed] to pay the income thereof to [*wife*], his wife, during her natural life, and, at her decease, to divide the same personal estate equally between his children, share and share alike, for their respective absolute use and benefit.”

Recital of will bequeathing share of general personal estate.

XXXIII.
MORTGAGE OF
A LEGACY OR
SHARE IN
RESIDUE.

that borrower
is entitled to
legacy;

that legacy
still unpaid
and agree-
ment for loan.

Testatum.

Second
testatum.

Assignment
of legacy (*f*).

Recital that
widow still
living and
of title of
borrower.

Recital of
administra-
tion action.

Or share of
residue.

try (*d*); AND WHEREAS the borrower attained his age of twenty-one years on the — day of — (*e*); AND WHEREAS [the said legacy has not yet been paid, and] the lender has agreed to lend the borrower the sum of £—, upon having the same with interest secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), he the borrower covenants [*covenant to pay principal and interest, ante, p. 22*].

2. For the consideration aforesaid, the borrower, as beneficial owner, assigns unto the lender ALL THAT the (*g*) legacy or sum of 1,000*l.* so bequeathed to him the borrower by the hereinbefore recited will of the said [*testator*], deceased, as aforesaid, and all moneys to become due and payable in respect of the

(*d*) “AND WHEREAS the said [*wife*], the widow of the said [*testator*], is still living; AND WHEREAS the said [*testator*] left four children living at his decease, and the borrower is one of such children.”

(*e*) If an action has been instituted for carrying into effect the trusts of the testator's will, in which an order has been made, say,

“AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, dated the — day of —, made by Mr. Justice —, in an action wherein [*C. D.*] and others are plaintiffs, and the said [*executors*] are defendants: it was ordered that the trusts of the said [*testator's*] will should be established and carried into execution, and that it should be referred,” &c. [*state the terms of the order, and the subsequent proceedings, if any, in Chambers*].

(*f*) The trustees or executors are not bound to pay to the mortgagee more than is due to him on the mortgage: see *Re Bell*, [1896] 1 Ch. 1; and *Hockey v. Western*, [1898] 1 Ch. 350.

(*g*) “One undivided fourth part or share of him the borrower, and all other his part and share of and in the [*residuary*] personal estate of the said [*testator*], deceased, so given and bequeathed by the said will as aforesaid, and all and every such sum or sums of money as shall be payable to or recoverable by the borrower in respect thereof.”

same legacy (*h*); together with full power to demand, sue for, recover, receive, and give effectual discharges for the same legacy (*i*) and moneys in the name or names of the borrower, his executors or administrators, or otherwise: To HOLD the said legacy (*i*) and other the premises hereby assigned unto the lender, his executors, administrators, and assigns, upon trust to receive the same, and thereout in the first place to pay all costs and expenses of and incidental to obtaining payment thereof, and all other costs, charges, and expenses properly incurred by the lender, his executors, administrators, or assigns hereunder, and in the next place to retain to himself and themselves all principal moneys and interest which shall then be due to him or them under or by virtue of this security; AND to pay the surplus (if any) of the said legacy (*i*) and premises unto the borrower, his executors, administrators, or assigns (*k*).

XXXIII.
MORTGAGE OF
A LEGACY OR
SHARE IN
RESIDUE.

Habendum.

(*h*) Add, if the assignment is of a fund in Court—

“And all and every such sums or sum of money as shall be payable to or recoverable by the borrower under or by virtue of the hereinbefore recited order, or otherwise in the hereinbefore mentioned action.”

(*i*) “undivided part or share.”

(*k*) If the assignment is of a fund in Court, proceed as follows:—

“AND the borrower hereby empowers the lender, his executors, administrators, or assigns, at any time or times during the continuance of this security, as well before as after the said — day of — next, to give such notices, apply for and obtain such stop or other orders, make such inquiries, obtain such evidence, and take such proceedings and do such other acts for protecting, perfecting, proving, or upholding his or their title to the said premises hereby assigned as he or they shall think fit, and for the purposes aforesaid to use the borrower’s name, and to instruct solicitors and counsel accordingly, and all moneys expended by the lender or his assigns under this provision shall be deemed to be properly paid by him or them.”

Power to
obtain stop
order.

In the case of a fund in Court, a stop order is equivalent to notice, and notice to the trustees is ineffectual: see *Greening v. Bickford*, 5 Sim. 195; *Pinmock v. Bailey*, 23 Ch. D. 497; *Montefiore v. Guedalla*, [1903] 2 Ch. 26. Stop orders are usually obtained upon an application by summons; but where a fund exceeding 1,000*l.* has been paid into Court under the Trustee

As to stop
orders.

XXXIII.
MORTGAGE OF
A LEGACY OR
SHARE IN
RESIDUE.

Proviso for
redemption.

3. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the — day of — next, pay to the lender, his executors, administrators, or assigns, the said principal sum of £—, with interest for the same at the rate aforesaid, then the lender, his executors, administrators, or assigns, shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925 (l), or in lieu of such receipt, if the borrower, his executors, administrators, or assigns, shall so require, execute at the cost of the person or persons requiring the same a re-assignment of the premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

IN WITNESS, &c.

XXXIV. MORTGAGE of REVERSIONARY INTEREST in a
FUND in COURT. PROVISIO for CAPITALISATION of INTEREST.
POWERS for MORTGAGEE to OBTAIN a STOP ORDER
and INSTITUTE and DEFEND PROCEEDINGS in ACTION.

Parties.

THIS MORTGAGE (m), made the — day of —, 19—,
BETWEEN [mortgagor], of, &c. (hereinafter called “the bor-

Act, 1893, and no prior application has been made, a petition is necessary: *Re Toogood* (1887), W. N. 109. As to stop orders, see R. S. C. 1883, Order XLVI.; Daniell, Ch. P. 8th ed. 1428. If the fund is in the hands of trustees, inquiry should be made of them individually as to prior incumbrances, and notice of the assignment should be given to them: *Dearle v. Hall*, 3 Russ. 1; *Re Freshfield's Trust*, 11 Ch. D. 198; *Ward v. Duncombe*, [1893] A. C. 369.

(l) By sect. 115 (1), “A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage, or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release—

“ (b) Where the mortgage does not take effect by demise or sub-demise as a reconveyance thereof to the extent of the interest which is the subject-matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption.”

By sect. 205 (1) (xvi), “mortgage” includes any charge or lien on any property for securing money or money's worth; and (xx), “property” includes any thing in action, and any interest in real or personal property.

Stamp.

(m) Stamp, *ad valorem* on the principal amount secured, and, it would

rower"), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; WHEREAS the borrower, as one of the children of [A. B.], his mother, is or claims to be entitled, under a will dated the — day of —, of [*testator*], deceased, in reversion expectant on the death of [*person entitled to life interest in the fund*], to one equal — part, or share of and in the residuary estate of the said [*testator*], and the moneys, stocks, funds, and securities for the time being constituting or representing the same; AND WHEREAS [*recite any proceedings in the action*, ante, p. 110, n. (e)]; AND WHEREAS the funds now constituting or representing the residuary estate of the said [*testator*] consist of the sum of 16,214*l.* 19*s.* 6*d.* £2½ per cent. Consolidated Stock, standing in the name of the Paymaster-General of the Chancery Division of the High Court of Justice in the said action; AND WHEREAS the lenders have agreed to lend to the borrower the sum of £—— upon having the repayment of the same with interest at the rate hereinafter mentioned secured in manner hereinafter appearing; AND it has also been agreed that the said loan shall be continued and the interest to accrue upon the said sum of £—— shall be forborne and allowed to accumulate by way of compound interest at the option of the borrower for the period and in the manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid to the borrower by the lenders out of moneys belonging to them on a joint account (the receipt of which sum of £—— is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest*, ante, p. 13].

2. In further pursuance of the said agreement and for the consideration aforesaid, the said borrower hereby, as beneficial owner, assigns unto the lenders, ALL THAT the part or share, parts or shares, to which he the borrower, as one of the three children of the said [A. B.], his mother, is entitled in reversion expectant on the death of the said — as aforesaid under the hereinbefore recited will of the said [*testator*], or otherwise, of or in the

XXXIII.
MORTGAGE OF
REVERSION-
ARY INTEREST
IN FUND IN
COURT.

Recitals:

of title or
claim of
borrower;

of proceed-
ings in action,
and state of
fund in
Court;

of agreement
for loan.

Testatum.

Covenant to
pay principal
and interest.

Second
testatum.

Assignment of
reversionary
interest.

seem, a further stamp to cover the estimated amount of capitalized interest: see Stamp Act, 1891, s. 88.

XXXIV.
MORTGAGE OF
REVERSION-
ARY INTEREST
IN FUND IN
COURT.

said sum of stock and of or in all other (if any) the moneys, stocks, funds, and securities, for the time being constituting or representing the said residuary estate, with all powers and remedies for recovering and obtaining payment and transfer of the said share or shares and premises hereby assigned: To HOLD the same unto the lenders, subject to the proviso for redemption following.

Proviso for
redemption.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lenders the said principal sum of £—, with interest for the same at the rate aforesaid, then the lenders shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment of the premises unto the borrower or as he shall direct.

Proviso that
principal
shall not be
called in
during joint
lives of life
tenant and
borrower,
and for
capitalisation
of interest (n).

4. PROVIDED ALWAYS, that during the period of — years from the date of these presents, if the said [*person entitled for life*] and the borrower shall both of them so long live, the said principal sum of £— shall not, nor shall any part thereof, be called in, and in the like event the interest accruing upon the said principal sum of £— during such period of — years, and also all interest accruing upon that or any other interest forborne and allowed to accumulate by virtue of this present proviso, shall from time to time, and as the same shall accrue half-yearly, be forborne and added to the said principal sum of £— as or in the nature of a further advance; AND shall carry interest at the rate of — per cent. per annum, which shall be considered to be accrued due and payable from time to time on the respective half-yearly days hereinbefore appointed for payment of interest on the said principal sum of £—, so that by the addition and capitalisation of interest as aforesaid, the total principal moneys hereby secured may be augmented upon the footing of an accumulation at compound interest computed at the rate of — per cent. per annum, with rests taken or made half-yearly on the — day of — and the — day of — respectively.

Charge of
capitalised
interest.

5. AND IT IS HEREBY AGREED that all such additions by means of capitalised interest, whether on the said principal sum or any

(n) In the absence of contract, simple interest only can be charged (*Daniell v. Sinclair*, 6 App. Cas. 181); but compound interest may be charged by the mortgage: *Clarkson v. Henderson*, 14 Ch. D. 348.

interest added thereto in the nature of further advances, shall be charged upon all and singular the premises hereby assigned, and shall to all intents and purposes be within the scope and operation of the present security; AND FURTHER, that all such additions to the said principal sum in the nature of further advances shall be payable by the borrower upon the same being demanded by the lenders; AND he the borrower hereby covenants for payment thereof upon demand accordingly; but, nevertheless, it is hereby agreed that in the event hereinbefore specified for the continuance of the said principal sum of £—, any additions made thereto as aforesaid shall not, nor shall any part thereof or interest thereon, be called in during the said determinable period of — years from the date of these presents:

6. PROVIDED ALWAYS, that, notwithstanding anything hereinbefore contained, it shall be lawful for the borrower at any time within — days after any half-yearly day appointed for the payment of interest under these presents, to pay the interest accruing on such half-yearly day, which would under the proviso hereinbefore in that behalf contained be treated as or on the footing of a further advance made on that day; AND every such payment of interest within — days after the appointed half-yearly day, shall wholly prevent the capitalisation of the interest so paid, but without interfering with the computation and capitalisation of prior or subsequent interest; AND that in the event of the death of the said [*person entitled to life interest*] or of the borrower taking place within the said period of — years, then immediately and without any notice being given or any step taken for the purpose, the said provisions hereinbefore contained for continuance of the said principal sum of £— and forbearance of interest shall cease to have any further or prospective operation, except so far as may be necessary for ascertaining the amount of the principal moneys and interest owing upon the present security at the time of the happening of such event.

7. PROVIDED ALWAYS, that it shall be lawful for the lenders, at any time during the subsistence of this security, to appear either as plaintiffs or defendants for the borrower in the said action or any proceedings taken or to be taken therein for the purpose of obtaining a stop order or stop orders (*o*), or of pro-

XXXIV.
MORTGAGE OF
REVERSION-
ARY INTEREST
IN FUND IN
COURT.

Proviso that
borrower
may never-
theless pay
interest so as
to prevent
capitalisa-
tion.

Proviso deter-
mining pro-
vision for
continuance
of loan and
capitalisation
of interest in
certain
events.

Power to
obtain stop
order.

(*o*) See, as to stop orders, *ante*, p. 111, note (*k*).

XXXIV.
MORTGAGE OF
REVERSION-
ARY INTEREST
IN FUND IN
COURT.

Power for
lenders to
institute and
defend pro-
ceedings.

protecting the share, right, and interest of the borrower in the premises and otherwise to act in relation to the premises as the lenders shall from time to time think proper, without the necessity of serving any notice or order upon the borrower, or any person or persons in his behalf, or of obtaining his concurrence, and for the purposes aforesaid to instruct solicitors, counsel, and others, as the lenders may be advised: PROVIDED ALSO that for the purpose of enabling the lenders to obtain the full benefit and advantage of the assignment hereby made, the borrower hereby authorises and empowers the lenders to institute, prosecute, defend, appear or concur in, or compromise, or put an end to all such actions or other proceedings as the lenders shall think expedient to institute, or which shall have been instituted either for recovering possession or obtaining payment of the part or share, parts or shares, and premises hereby assigned, or any of them, or any moneys which shall or may become recoverable or receivable in respect of the same or any of them, when and as the premises shall cease to be reversionary and become recoverable or receivable, and generally for such purposes, or any of them, to execute and give all such receipts, agreements, and releases by deed or otherwise as they shall think reasonable and proper, and to use the name of the borrower as the lenders shall think fit; AND it is hereby expressly agreed that all costs, charges, and expenses as between solicitor and client to be incurred in the exercise of the powers hereby given, or any of them, shall be considered as covered by this present security, and be allowed accordingly.

Interpretation
clause.

8. PROVIDED ALWAYS, that in the construction of this deed, unless the contrary appears, the expression "the borrower" shall include the said [*mortgagor*], his executors, administrators, and assigns; and the expression "the lenders" shall include the said [*mortgagees*] and the [survivors or] survivor of them, and the executors or administrators of such survivor and their or his assigns.

IN WITNESS, &c.

XXXV. MORTGAGE of a SHARE in a PARTNERSHIP BUSINESS (*p*).XXXV.
MORTGAGE OF
SHARE IN
PARTNERSHIP
BUSINESS.

THIS MORTGAGE (*q*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower”), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part; WHEREAS the borrower is a partner in the firm of —, carrying on the business of —, at —, in the county of —, under articles of partnership dated the — day of —, 19—; AND WHEREAS the lender has agreed to lend to the borrower the sum of £—, upon having the repayment of the same secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

Parties.

Recitals:

of partner-
ship;of agreement
for loan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £—, now paid to the borrower by the lender (the receipt whereof is hereby acknowledged), the borrower hereby covenants, &c. [*covenant for payment of principal and interest, ante, p. 22*].

Covenant to
pay principal
and interest.

2. For the consideration aforesaid the borrower, as beneficial owner, hereby assigns unto the lender, ALL that his share and interest in the said business, and in the goodwill thereof, and in the capital, book debts, and assets thereof, as well present as future: To HOLD the same unto the lender, subject to the proviso for redemption following:—

Second
testatum.
Charge of
shares in
partnership.

3. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the — day of — next, pay

Proviso for
redemption.

(*p*) A person may generally advance money to a partnership firm or to one of its members on the security of the property or of a share in the property of the partnership, without thereby becoming a partner. As to the rights of an assignee of a share in a partnership, see the Partnership Act, 1890, s. 31. The mortgagee of a share can require an account of the mortgagor's interest in the partnership, as from the date when the mortgagee proceeded to take possession under the mortgage, or if a dissolution has previously taken place, then as from the date of the dissolution: *Whetham v. Davey*, 30 Ch. D. 574; *Watts v. Driscoll*, [1901] 1 Ch. 294. The reputed ownership clause in the Bankruptcy or Bills of Sale Acts does not affect a mortgage of a share of a partnership: see *Re Bainbridge*, 8 Ch. D. 218. As to the effect of an assignment by a limited partner of his share in the partnership with the consent of his partners, see the Limited Partnerships Act, 1907, s. 6 (5) (b).

Mortgage of
share in a
partnership.

(*q*) Stamp, *ad valorem* on amount secured.

Stamp.

XXXV.
MORTGAGE OF
SHARE IN
PARTNERSHIP
BUSINESS.

to the lender, his executors, administrators, or assigns, the sum of £—, with interest thereon at the rate aforesaid, then the lender, his executors, administrators, or assigns, will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower, his executors, administrators, or assigns, shall so require, execute at the cost of the person or persons requiring the same a re-assignment or transfer of the premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

Covenants by
borrower:
to observe
articles of
partnership;

4. The borrower hereby covenants with the lender that he the borrower will, so long as he shall continue a partner in the said firm, and during the continuance of this security, duly observe and perform all the covenants, conditions, and stipulations contained in the said articles, and on his part to be observed and performed; AND will not do or suffer anything whereby the said partnership may be determined, or the said share or interest, and premises hereby charged, or any of them, may be incumbered or alienated, save in the ordinary course of business (r), or otherwise prejudicially affected in any way whatsoever; AND will at all times during the continuance of this security give to the lender, his executors, administrators, or assigns, all such information as he or they may reasonably require as to the affairs of the said business and its liabilities, assets, profits, and losses, and, provided that his partners will consent, will allow the lender, his executors, administrators, or assigns, to inspect the books of the partnership, and make copies and extracts therefrom.

to give in-
formation as
to the state of
the business.

IN WITNESS, &c.

(r) This exception, if not expressly mentioned, would be implied: see *Taylor v. McKeand*, 5 O. P. D. 358.

XXXVI. MEMORANDUM OF DEPOSIT OF TITLE DEEDS (s).

XXXVI.
MEMORANDUM
OF DEPOSIT.

MEMORANDUM (t) that on the — day of —, 19—, I [depositor], of, &c., deposited with [depositee], of, &c., the title deeds and documents relating to certain lands and hereditaments situate at —, in the county of —, and specified in the schedule hereto, to secure the repayment to him, on the — day of — next, of £— this day advanced to me by him, and any further advances which he may hereafter make to me with interest at the rate of — per cent. per annum and costs.

(Signature of Depositor.)

THE SCHEDULE ABOVE REFERRED TO.

(s) The L. P. A. 1925, s. 13, provides that—

“This Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.”

Such an equitable mortgage by deposit of title deeds does not require to be registered under sect. 10 of the Land Charges Act, 1925.

Any equitable interest protected by a deposit of documents relating to the legal estate affected is excepted from the operation of sub-sect. (2) of sect. 2 of the Act, and is therefore not overreached by a conveyance by the estate owner to trustees on trust for sale. See also sect. 21, sub-sect. (2) (i), of the S. L. A. 1925.

(t) A memorandum in this form need not be under seal, and being under hand only, is liable to stamp duty at the lower rate of 1s. for every 100l. and any fractional part of 100l. of the amount secured (Stamp Act, 1891, s. 86 (2) and schedule, Mortgage Bond, &c. (3)), and a further stamp at the same rate to cover further advances (sect. 88). The mortgagee does not thereby acquire any powers of sale, &c. by virtue of the L. P. A. 1925. In *Backhouse v. Charlton*, 8 Ch. D. 444, it was held that the remedy of the mortgagee was by foreclosure, not by sale; but he may have an order in his foreclosure action for sale of the mortgaged property: see Conveyancing Act, 1881, s. 25 (2), now re-enacted by sect. 91 (2) of the L. P. A. 1925. In *Oldham v. Stringer* (1884), W. N. p. 235 (*S. C.*, 33 W. R. 251; 51 L. T. (895), an order for sale was made where there was a deposit of deeds unaccompanied by any memorandum. A deposit of deeds is an imperfect mortgage, which the mortgagee is entitled at any time to have perfected by a formal mortgage: *Parker v. Housefield*, 2 My. & K. 419. Under an equitable mortgage by deposit of title deeds the mortgagor is entitled to six months for

Stamp and
effect of
simple memo-
randum of
deposit.

XXXVII. MEMO-
RANDUM OF
DEPOSIT
AND CHARGE.

XXXVII.—MEMORANDUM of AGREEMENT *and* CHARGE
to accompany DEPOSIT of TITLE DEEDS to secure
REPAYMENT of a LOAN (*u*).

Parties. MEMORANDUM OF AGREEMENT (*x*), made the — day
of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called
“the borrower”), of the one part, and [*mortgagee*], of, &c. and
[*mortgagee*], of, &c. (hereinafter called “the lenders”), of the
Recitals: other part; WHEREAS, at the request of the borrower, the lenders
of loan; have this day advanced to him out of moneys belonging to them on
a joint account (*y*) the sum of £— (the receipt whereof is hereby
acknowledged), to bear interest after the rate of — per cent. per
of deposit of annum from the day of the date of these presents; AND WHEREAS
deeds. the borrower has this day deposited with the lenders, by way of
equitable mortgage for securing the sum of £— and interest
after the rate aforesaid, the several deeds and documents of title
mentioned in the schedule hereto, which deeds and documents
relate to certain lands and hereditaments of the borrower at —,
in the county of —: NOW THESE PRESENTS WITNESS
as follows:—

Charge and
agreement to
perfect title
and execute
mortgage (*z*);

1. In consideration of the premises, the borrower hereby charges
all his estate and interest of and in the said lands and heredita-
ments with the said principal sum of £— and interest thereon

redemption (see *Parker v. Housefield*, *sup.*), but the mortgagee is not
entitled to six months' notice or interest in lieu of notice: see *Fitzgerald's
Trustee v. Mellersh*, [1892] 1 Ch. 385. As to registering a memorandum
of deposit in Yorkshire, see the Yorkshire Registries Act, 1884 (47 & 48
Vict. c. 54), s. 7; and *Battison v. Hobson*, [1896] 2 Ch. 403, at 412.

(*u*) As to equitable mortgages by deposit of deeds, see notes to *Russel
v. Russel* in *White & Tudor*, L. O.

Stamp.

(*x*) This memorandum should be executed in duplicate, and if under
hand only, should be stamped with an *ad valorem* stamp at the lower rate
(see last precedent, note (*x*)); but at the higher rate of 2s. 6d. for every
100l. if under seal: *United Realization Co. v. Inland Revenue Commis-
sioners*, [1899] 1 Q. B. 361. If clause 3 is inserted, the agreement must
be under seal, and the higher duty will be payable: see *Shep. Touch*. 58.

(*y*) See sect. 111 of the L. P. A. 1925, re-enacting sect. 61 of the
C. A. 1881.

(*z*) As to the effect of an agreement to execute a legal mortgage, see
Maxfield v. Burton, L. R. 17 Eq. 15; *Farmer v. Pitt*, [1902] 1 Ch. 954.

at the rate and in manner aforesaid, and agrees that he the borrower will at his own cost perfect and evidence the title to the said estate to the satisfaction of the counsel in the law of the lenders, and at the like cost, on their request, execute a legal mortgage of the said estate, to be prepared by their solicitor, and to contain all such powers and provisions as their counsel in the law shall advise.

XXXVII. MEMO-
RANDUM OF
DEPOSIT
AND CHARGE.

2. IT IS HEREBY ALSO AGREED that in the meantime the lenders and the survivors and survivor of them, and the executors or administrators of such survivor, and their or his assigns, shall have all such remedies as they or he would be entitled to as equitable mortgagees by deposit of deeds, and also all such other remedies (if any) as they or he ought to have or be held entitled to in consequence or by virtue of the said advance or of these presents.

that mean-
while lenders
shall be
entitled to
remedies, &c.
(a).

3. The borrower hereby irrevocably appoints the lenders and each of them his attorneys and his attorney for him, and in his name and on his behalf, and as his act and deed or otherwise, to execute such legal or formal mortgage as aforesaid, or any deed, assurance, or act which may be required or may be deemed proper on any sale of the said hereditaments and premises, or any part thereof, under the power of sale applicable hereto, in order to vest the legal estate or other the estate or interest of the borrower therein in the purchaser or purchasers, with power to appoint a substitute or substitutes for the purposes aforesaid, or any of them.

Power of
attorney.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(a) The mortgagee can sell under sect. 104 of the L. P. A. 1925 (re-enacting sect. 21 (1) and (2) of the O. A. 1881, and sect. 5 (1) of the O. A. 1911), but until a legal mortgage has been executed he cannot under that section convey the legal estate: *Re Hodson and Howe*, 35 Ch. D. 668. To enable him to do so an irrevocable power of attorney should be inserted, as in the next clause; but if the loan is merely a temporary transaction, it may not be necessary to do more than deposit the deeds as a security, omitting clause 3.

XXXVIII.
EQUITABLE
MORTGAGE BY
DEPOSIT TO
BANK.

XXXVIII. MEMORANDUM of DEPOSIT by way of
EQUITABLE MORTGAGE to a BANK to secure BALANCE of
ACCOUNT CURRENT.

To the — Banking Company.

Memorandum
of deposit.

Agreement to
repay loan.

Charge of
lands, &c.

Declaration
that mort-
gagees may
exercise
statutory
powers.

Agreement
to execute
mortgage.

MEMORANDUM (b): WE, the undersigned [*mortgagor*], of, &c., and [*mortgagor*], of, &c., hereby declare that the several documents mentioned in the schedule hereto have been deposited, and shall remain with you as a security for the payment to you of all money due or to become due, or from time to time accruing due from us to you on any account whatsoever, including charges for interest, discount, commission, and all costs, charges and expenses which you may incur in enforcing or obtaining payment of such money, or in realising this or any further security; AND we hereby agree to pay to you immediately upon demand all such money; AND we hereby charge the hereditaments and premises comprised in such documents respectively, and all fixtures now or hereafter to be thereon, with the payment to you of all such money (c); AND we hereby declare that the powers and indemnities given to mortgagees by the Law of Property Act, 1925, are intended to and shall apply to the security intended to be hereby created, but with the variation that the power of sale conferred by the Law of Property Act, 1925, shall not be subject to the provisions contained in the 103rd section thereof, but shall be exercisable at any time hereafter immediately upon any money becoming due from us to you; AND we agree to execute any further deed or document for assuring the hereditaments and premises aforesaid unto and vesting the same in you, with all such powers of entry, leasing, sale, and otherwise for securing immediate payment of all such money as your solicitor may advise, such deeds and documents respectively to be prepared by such solicitor at our expense; AND we further hereby declare,

Stamp

(b) Stamp, *ad valorem* on probable amount of advances. If under hand, at the lower rate: see *ante*, p. 119, note (t). If the last clause is inserted containing a power of attorney to execute deeds, the instrument would have to be under seal, and the higher rate of stamp duty would be payable: see notes to last precedent.

(c) Where only a temporary loan is contemplated the memorandum might stop here.

that so long as any such money shall be due or accruing due to you, the present trustees of the will of [*testator*] mentioned in the said schedule, will stand possessed of the legal estate in the said hereditaments and premises, upon trust for you and any purchaser or purchasers from you. [AND we hereby appoint your general manager for the time being receiver of the rents and profits of the said hereditaments and premises, and also attorney for us, to sign, seal, and deliver any such further deed or document as aforesaid; AND we hereby further declare, that all money (including penalties) which shall be paid by you or on your behalf for stamping this and any other document of title shall, for all the purposes of this deed, be considered as money due from and payable by us, and be included in and covered by this security.]

XXXVIII.
EQUITABLE
MORTGAGE BY
DEPOSIT TO
BANK.

Appointment
of receiver
and power of
attorney.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXXIX. EQUITABLE CHARGE (*d*) by way of SECOND MORTGAGE, as an ADDITIONAL SECURITY (*e*).

KNOW ALL MEN BY THESE PRESENTS (*f*), that I [*mortgagor*], of, &c., hereby charge all my estate and interest of and in the Charge of lands.

(*d*) As to equitable mortgages under the L. P. A. 1925, it is provided as follows:—

“Sect. 97.—Every mortgage affecting a legal estate in land made after the commencement of this Act [January 1st, 1926], whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected), shall rank according to its date of registration as a land charge pursuant to the L. C. A. 1925.

“This section does not apply to mortgages or charges of registered land,

(*e*) This security may, of course, be effected by a formal second mortgage (for a precedent of which see *ante*, p. 22). A charge in the above form should be by deed, so as to attach to itself the statutory power of sale, &c. Notice of this charge should be given to the prior incumbrancer (see sect. 94 of the L. P. A. 1925), and the charge should be registered under sect. 10 of the L. C. A. 1925.

(*f*) Stamp, *ad valorem* at the rate of 6*d.* for every 100*l.* and for any fractional part of 100*l.* of the amount secured: see Stamp Act, 1891, sched. *tit.* Mortgage Bond, &c. (2).

XXXIX.
EQUITABLE
CHARGE OF
LANDS AS
ADDITIONAL
SECURITY.

Agreements
by debtor;

to execute
mortgage;

to produce
receipts for
interest on
first mort-
gage (g).

land and hereditaments, known as the — Farm, situate in the parish of —, in the county of —, and containing by admeasurement — acres or thereabouts, with the payment to [*mortgagee*], of, &c., his executors, administrators, or assigns, on the — day of — next [*or, on demand*], of all principal moneys and interest secured by an indenture of mortgage, dated the — day of —, 19—, and made between myself of the one part, and the said [*mortgagee*] of the other part, with interest thereon at the rate of — per cent. per annum; subject nevertheless to an indenture, dated the — day of —, 19—, and made between [*parties*], whereby the premises were conveyed to the said [*first mortgagee*] by way of mortgage, to secure the payment of a principal sum of £— and interest thereon at the rate of — per cent. per annum; AND I hereby agree at any time upon the request of the said [*mortgagee*], his executors, administrators, or assigns, to make and execute to him or to them, at my own cost, a legal mortgage of the premises hereby charged with such powers, covenants and conditions, and with such restrictions upon the exercise by me of any statutory or other powers, and generally in such manner and form as he or they may require, and that meanwhile I will not exercise any of such powers without the previous consent in writing of the said [*mortgagee*], his executors, administrators, or assigns; AND I hereby agree that I will at all times

or of land within the jurisdiction of a local deeds registry.” (See the L. R. A. 1925, s. 135.)

“Sect. 90.—(1) Where an order for sale is made by the Court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage), the Court may, in favour of a purchaser, make a vesting order conveying the land, or may appoint a person to convey the land, or create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Act, but without prejudice to any incumbrancer having priority to the equitable mortgage, unless the incumbrancer consents to the sale.

“(2) This section applies to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been overreached under the powers conferred by this Act or otherwise.”

(g) This proviso may usefully be inserted in any *puisne* mortgage or charge where the amount secured by the first mortgage bears a considerable proportion to the estimated value of the property.

hereafter during the continuance of this security, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, produce to him or to them, or to such person or persons as he or they shall direct, the receipt for the payment of the interest which shall have accrued due under the said indenture of mortgage of the — day of —, 19— [*the first mortgage*], on the half-yearly day appointed for payment of such interest, immediately preceding the making of such request.

XXXIX.
EQUITABLE
CHARGE OF
LANDS AS
ADDITIONAL
SECURITY.

IN WITNESS, &c.

XL. DEED of FURTHER CHARGE by INDORSEMENT (h).

THIS FURTHER CHARGE (i), made the — day of —, 19—, BETWEEN the within named [*mortgagor*], of the one part, and the within named [*mortgagee*], of the other part, WITNESSETH as follows:—

Parties.

Testatum.

1. In consideration of the further sum of £— now paid to the said [*mortgagor*] by the said [*mortgagee*] (the receipt whereof is hereby acknowledged), the said [*mortgagor*] hereby covenants with the said [*mortgagee*] to pay to him, on the — day of —, 19— (k), the sum of £— and interest thereon in the meantime at the rate of — per centum per annum; AND ALSO so long after that day as any principal money shall remain due under this security, to pay to him interest thereon at the rate aforesaid, by equal half-yearly payments on the — day of — and the — day of — in each year.

Covenant to
pay principal
and interest.

2. For the consideration aforesaid, the said [*mortgagor*], as

Charge.

(h) See Form No. 2 given in the 5th schedule to the L. P. A., 1925, from which this precedent is adapted. A deed of further charge should, if possible, be indorsed on the original mortgage so as to be inseparable therefrom. If, however, the mode of engrossment or other circumstances render this impossible or inconvenient, the deed will generally be made supplemental to the original mortgage, so as to avoid the necessity of reciting it: see the next precedent. A form of further charge by independent deed reciting the mortgage is given *post*, Precedent XLIII., p. 129.

(i) Stamp, *ad valorem* at the higher rate on amount of further charge. Stamp.

(k) This will be the next ensuing half-yearly day appointed by the original mortgage for payment of interest.

XL. FURTHER CHARGE
BY INDORSEMENT.

beneficial owner (*l*), hereby charges by way of legal mortgage all the lands and hereditaments [*or, property*] comprised in the within written deed with the payment to the said [*mortgagee*] of the said sum of £—— and the interest thereon hereinbefore covenanted to be paid, as well as of the sum of £—— and interest secured by the within written deed.

IN WITNESS, &c.

XLI. DEED of FURTHER CHARGE by DEED SUPPLEMENTAL to the ORIGINAL MORTGAGE.

Parties.

THIS FURTHER CHARGE (*m*), made the —— day of ——, 19——, BETWEEN [*mortgagor*], of, &c., of the one part, and [*mortgagee*], of, &c., of the other part; AND supplemental to a legal charge (hereinafter referred to as the principal deed), dated the —— day of ——, 19——, and made between [*parties*] [*or, "the same parties as are parties hereto and in the same order"*] for securing the sum of £—— and interest thereon at the rate of —— per cent. per annum on a messuage and lands [*parcels*] situate in the parish of ——, in the county of ——, and particularly described in the principal deed, WITNESSETH that in consideration of the further sum of £—— now paid to the said [*mortgagor*] by the said [*mortgagee*], the receipt whereof is hereby acknowledged, &c. [*covenant for payment of principal and interest, and charge as in last precedent, substituting words "principal deed" for "within written deed"*].

Testatum.

Covenant and charge.

IN WITNESS, &c.

XLII. DEED of FURTHER CHARGE on a LIFE INTEREST and POLICY of INSURANCE. ASSIGNMENT of a FURTHER POLICY of INSURANCE on the LIFE of the MORTGAGOR.

Parties.

THIS FURTHER CHARGE (*n*), made the —— day of ——, 19——, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the bor-

(*l*) As to the implied covenants, see L. P. A. 1925, s. 76 (1) (c), and Part III. of the Second Schedule to the Act.

Stamp.

(*m*) Stamp, *ad valorem* on amount of further charge.

Stamp.

(*n*) Stamp, *ad valorem* on amount of further advance as a mortgage, and also on amount of original advance at the rate of 6*d.* per 100*l.* by reason of the additional security for the same.

rower"), of the one part, and [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (hereinafter called "the lenders"), of the other part; AND supplemental to an indenture (hereinafter referred to as "the principal indenture"), dated the — day of —, 19—, and made between [*parties*], whereby the life estate or interest of the borrower of and in [*describe nature of property*], and a certain life policy and premises were assigned to the said [*original mortgagees*] by way of mortgage to secure the repayment of the sum of 1,500*l.* and interest thereon as therein mentioned; WHEREAS all the estate and interest of the said [*original mortgagees*] under the principal indenture is now vested in the lenders; AND WHEREAS the sum of 1,500*l.* secured by the principal indenture is still owing, with interest thereon, from the — day of — now last past, but all interest thereon up to that date has been duly paid and satisfied; AND WHEREAS the lenders have agreed to lend to the borrower the further sum of 500*l.*, upon having the payment of the same with interest thereon at the rate of — per cent. per annum secured, and the payment of the said sum of 1,500*l.* and interest further secured in manner hereinafter appearing; AND WHEREAS as part of the said intended security the borrower has effected a further insurance on his own life in the sum of £— with the — Life Assurance Society, by a policy numbered — and dated the — day of —, 19—, and under the annual premium of £—: NOW THIS DEED WITNESSETH as follows:—

XLII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

Recitals:

of change in title of mortgagees; of state of mortgage debt;

of agreement for further advance;

of further policy of life assurance.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of 1,500*l.* now owing by the borrower upon the security of the principal indenture, and of the further sum of 500*l.* this day paid to the borrower by the lenders out of moneys belonging to them on a joint account (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lenders to pay to them on the — day of — next the sum of 2,000*l.*, with interest for the same, at the rate of — per cent. per annum computed as to the sum of 1,500*l.*, part of the said sum of 2,000*l.*, as from the — day of —, 19—, and as to the sum of 500*l.*, the remainder of the said sum of 2,000*l.*, as from the date of these presents, and also so long as any principal money shall remain due upon the security of the principal indenture, or of these presents, to pay to the lenders interest thereon after the

Covenant for payment of original and further advances and interest.

XLII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

Second.
testatum.

Assignment
of further
policy (o).
Habendum.

Proviso for
redemption.

Charge on
property
comprised in
original
mortgage and
substituted
policies.

rate aforesaid respectively by equal half-yearly payments on the — day of — and the — day of — in every year.

2. In further pursuance of the said agreement, and for the consideration aforesaid, he the borrower hereby, as beneficial owner, assigns unto the lenders all the said further policy of assurance hereinbefore described, together with the sum of £— thereby assured, and all other moneys assured or to become payable by virtue thereof, and the full benefit thereof, To HOLD the said policy and premises hereby assigned unto the lenders, subject to the proviso for redemption following.

3. PROVIDED ALWAYS, that if the borrower, his executors or administrators, shall, on the — day of —, pay to the lenders the said sum of 1,500*l.*, with interest thereon, from the — day of —, 19—, at the rate aforesaid; AND ALSO the sum of 500*l.* with interest thereon as from the date of these presents at the rate aforesaid, then the lenders will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower, his executors, administrators, or assigns, shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer of the said further policy and premises hereinbefore expressed to be hereby assigned unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

4. IT IS HEREBY AGREED that all and singular the life estate or interest, policy, and premises comprised in and assured by the principal indenture; AND ALSO any new policy or policies which may be effected under the powers and provisions contained in the same indenture, shall stand charged with and remain a security for the payment to the lenders as well of the said sum of 1,500*l.* and the interest for the same, as of the said sum of 500*l.* and the interest for the same, pursuant to the covenant in that behalf herein contained, and to the provisions of the principal indenture as hereby altered, and shall not be redeemable until both the said principal sums of 1,500*l.* and 500*l.*, and the interest thereon respectively, shall be fully paid and satisfied; AND it is hereby also agreed, that all covenants, trusts, powers, and pro-

(o) Notice of this assignment should be given to the insurance company.

visoes, in and by the principal indenture contained or implied by virtue of any statute or otherwise for securing the payment of the said sum of 1,500*l.* and the interest thereon, shall extend to and be applicable so as to be also a security for the said sum of 500*l.*, and the interest thereon, as if the said sum of 500*l.* had formed part of the principal money secured by the principal indenture: AND FURTHER, that all the covenants, trusts, powers, and provisions contained in the principal indenture and relating to the said policy of assurance thereby assigned, or any new or substituted policy or policies to be effected as therein mentioned, or the moneys to be received under or by virtue thereof respectively, shall extend and be applicable to the said further policy and premises hereinbefore expressed to be hereby assigned in the same manner in all respects as if such covenants, trusts, powers, and provisions contained in the same indenture were herein repeated with respect to such further policy, with such alterations only as are required by reason of the difference in the amounts assured and intended to be secured respectively.

IN WITNESS, &c.

XLII. FURTHER CHARGE ON LIFE INTEREST AND ASSIGNMENT OF FRESH POLICY.

Powers, &c. of original mortgage to extend to further advance and to further policy of assurance.

XLIII. DEED of FURTHER CHARGE on FREEHOLDS (by INDEPENDENT DEED) *where the ORIGINAL ADVANCE and ARREARS of INTEREST are CONSOLIDATED with the FURTHER ADVANCE, and the RATE of INTEREST and HALF-YEARLY DAYS of PAYMENT are ALTERED. A MESNE INCUMBRANCER joins for the purpose of POSTPONING his SECURITY. MORTGAGE of ADDITIONAL FREEHOLDS as a FURTHER SECURITY for the ORIGINAL and FURTHER ADVANCES.*

THIS FURTHER CHARGE (*p*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower”), of the first part; [*mesne incumbrancer*], of, &c., of the second part; and [*mortgagee*], of, &c. (hereinafter called “the Parties.

(*p*) Stamp, *ad valorem* on amount of arrears of interest and further advance as a mortgage, and on the amount of the original advance at the rate of 6*d.* per 100*l.* as an additional security for the same. Stamp.

XLIII. FURTHER CHARGE
AND
MORTGAGE OF
ADDITIONAL
FREEHOLDS.

Recitals:
of first
mortgage;

of second
mortgage;

lender”), of the third part; WHEREAS, by an indenture of mortgage dated the — day of —, and made between the borrower, of the one part, and the lender, of the other part, in consideration of the sum of £— [*original advance*] paid to the borrower by the lender, the borrower covenanted with the lender to pay to him, on the — day of —, the sum of £— [*original advance*], with interest thereon in the meantime at the rate of 4 per cent. per annum, and also as long after that day as any principal money should remain due thereunder, to pay to him interest thereon at the same rate by equal half-yearly payments, on the first day of January and the first day of July in every year; AND by the indenture now in recital, certain freehold lands and hereditaments situate in the parish of —, in the county of —, and therein particularly described, were demised (*q*) unto the lender, without impeachment of waste, for a term of [three thousand] years to commence from the date of the said indenture, subject to redemption of the same premises, on payment to the lender, his executors, administrators, or assigns, of the said sum of £— [*original advance*], with interest thereon at the rate aforesaid, on the said — day of —, 19—; AND by the indenture now in recital it was provided, &c. [*recite any special provisions as to insurance, &c.*]; AND WHEREAS, by an indenture dated the — day of —, 19—, and made between the borrower, of the one part, and the said [*mesne incumbrancer*], of the other part, the hereditaments comprised in the hereinbefore recited indenture of mortgage were conveyed or assured subject thereto unto the said [*mesne incumbrancer*] for a term of [three thousand] years and one day, to commence from the said — day of — [*date of the first mortgage*] [*or*, “unto and to the use of the said [*mesne incumbrancer*], his heirs and assigns”], by way of mortgage, to secure the payment to the said [*mesne incumbrancer*], his

(*q*) If the mortgage was made prior to 1926, say,
“conveyed unto and to the use of the lender in fee simple,”
or as the case may be, and add the following recital:

“AND WHEREAS, by virtue of the Law of Property Act, 1925, the said lands and hereditaments are now vested in the lender for a term of three thousand years from the 1st day of January, 1926, without impeachment of waste, but subject to a provision for cesser as provided by the said Act.”

executors, administrators, or assigns, of the sum of £—, with interest thereon as therein mentioned; AND WHEREAS the said sum of £—, with the sum of £— for interest thereon from the — day of —, 19—, is now due and owing on the security of the hereinbefore first recited indenture of mortgage; AND WHEREAS the lender has agreed to lend to the borrower the further sum of £—, upon the terms hereinafter appearing; AND WHEREAS upon the treaty for the said further advance, it was agreed that the said principal sum of £— [*original advance*], and the said sum of £— so owing for interest thereon as aforesaid, and also the said further sum of £— [*further advance*], should be consolidated, and should henceforth bear interest at the rate hereinafter mentioned, and that the payment of the said aggregate sum of £—, with interest thereon, should be secured in manner hereinafter appearing; AND that the said [*mesne incumbrancer*] should join in these presents for the purpose of postponing the said principal sum of £— and interest thereon secured by the hereinbefore recited indenture of the — day of —, 19— [*second mortgage*], and the securities for the same respectively, so far as relates to the said lands and hereditaments comprised in the hereinbefore recited indenture of the — day of —, 19— [*first mortgage*], to the principal moneys and interest intended to be hereby secured, and the security intended to be hereby effected: NOW THIS DEED WITNESSETH as follows:—

XLIII. FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS.

of state of mortgage debt;
of agreement for further advance;
of terms of further advance.

Testatum.

1. In pursuance of the said agreement, and in consideration of the said principal sum of £—, and the sum of £— for interest thereon, now owing as aforesaid, and of the further sum of £— now paid to the borrower by the lender (the receipt of which further sum of £—, making with the said sums of £— and £— the aggregate sum of £—, the borrower hereby acknowledges), the borrower hereby covenants with the lender to pay to him, on the — day of — next, the sum of £— [*the aggregate sum*], with interest thereon in the meantime at the rate of £— per cent. per annum [*new rate*]; AND ALSO so long after that day as any principal money shall remain due under this security to pay to the lender interest thereon at the same rate by equal half-yearly payments on the — day of — and the — day of — in every year.

Covenant for payment of aggregate principal sum and interest.

**XLIII. FURTHER CHARGE
AND
MORTGAGE OF
ADDITIONAL
FREEHOLDS.**

Second
testatum.
Declaration
as to equity of
redemption.

Third
testatum.
Demise
of additional
freeholds.

Proviso for
redemption.

Powers, &c.
of original
mortgage to
extend to
aggregate
amount
secured.

2. In further pursuance of the said further agreement, and for the consideration aforesaid, it is hereby agreed and declared that the said lands and hereditaments comprised in and assured by the hereinbefore recited indenture of the — day of —, 19— [*first mortgage*], shall henceforth be freed and discharged from the equity of redemption therein subsisting under or by virtue of the same indenture, but shall be subject to the proviso for redemption hereinafter contained.

3. In further pursuance of the said agreement, and for the consideration aforesaid, the borrower, as beneficial owner, hereby demises unto the lender ALL THAT, &c. [*parcels*], To HOLD the same unto the lender, without impeachment of waste, for a term of [three thousand] years to commence from the — day of — [*date of the original mortgage*](*r*), subject to the proviso for redemption following.

4. PROVIDED ALWAYS that if the borrower, his executors, administrators, or assigns, shall, on the — day of — next, pay to the lender the sum of £— [*the aggregate sum*] and interest thereon at the rate last aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower, his executors, administrators, or assigns, shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer as well of the hereditaments and premises comprised in and demised [*or, assured*] by the said indenture of the — day of — [*first mortgage*] as also of the hereditaments and premises hereby demised to the borrower, his executors, administrators, or assigns, or as he or they shall direct.

5. IT IS HEREBY AGREED that all the covenants, trusts, powers, and provisoes in the said indenture of the — day of —, 19— [*the first mortgage*], contained or implied by statute or otherwise, for securing the payment of the said sum of £— [*the original advance*] and the interest thereon, shall extend and be applicable so as to be a security for the said aggregate sum of £—, and

(*r*) If the original mortgage was made prior to 1926, say,
“for a term of three thousand years to commence from the 1st day of January, 1926.”

interest thereon at the rate of — per cent. per annum [*new rate*], in the same manner in all respects as if such covenants, trusts, powers, and provisions were herein repeated, with such alterations only as are required, by reason of the difference in the principal amount secured and in the rate of interest hereby made payable, and in the days hereby appointed for payment thereof respectively.

XLIII. FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS.

6. IT IS HEREBY FURTHER AGREED that all the covenants and provisions contained in the said indenture of the — day of — [*first mortgage*], with respect to the insurance of the premises therein comprised, and to the exercise of statutory powers of leasing or letting the same premises, shall extend and be applicable to the said lands and hereditaments hereby demised, in the same manner in all respects as if such covenants and provisions contained in the last mentioned indenture were herein repeated, except as is hereinafter provided, with such alterations only as are required as aforesaid.

Provisoes as to insurance, &c. of premises comprised in original mortgage to extend to additional freeholds.

7. PROVIDED ALWAYS, that the buildings and insurable property situate and being upon or in the said lands and hereditaments hereby demised shall be kept insured against loss or damage by fire to the amount of £—— at least, such amount to be in addition to, and not in substitution for, the amount to be insured, as provided in the last mentioned indenture.

Proviso as to amount insurable.

8. PROVIDED ALWAYS, and the said [*mesne incumbrancer*], at the request of the borrower, hereby covenants with the lender that not only the said principal sum of £—— and interest thereon, secured by the hereinbefore recited indenture of the — day of —, 19— [*first mortgage*], but also the said sum of £—— so owing for interest thereon as aforesaid, and the said sum of £—— [*further advance*], making together the said aggregate sum of £——, with interest for the same at the rate of — per cent. per annum [*new rate*], shall be charged upon the said lands and hereditaments comprised in and assured by the hereinbefore recited indenture of the — day of —, 19— [*first mortgage*], in priority (s) to the said sum of £—— so owing to the said [*mesne*

Mesne incumbrancer postpones his security.

(s) Sect. 94 of the L. P. A. 1925, provides that—

“(1) After the commencement of this Act [January 1st, 1926], a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

“(a) if an arrangement has been made to that effect with the subsequent mortgagees; or

XLIII. FURTHER CHARGE
AND
MORTGAGE OF
ADDITIONAL
FREEHOLDS.

incumbrancer] on the security of the hereinbefore recited indenture of the — day of —, 19— [*second mortgage*], and all interest now or hereafter to accrue due for the same and every part thereof respectively.

9. [*Covenant against registration as in Precedent II., ante, p. 11.*]

IN WITNESS, &c.

XLIV. DEED of FURTHER CHARGE to a BUILDING SOCIETY
INCORPORATED under the *Building Societies Act, 1874*
(by INDORSEMENT).

Parties.

Recital of
agreement
for further
advance.

Testatum.

THIS FURTHER CHARGE (*t*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (to whom the hereditaments within described have been conveyed in fee simple, subject to the mortgage term granted by the within written deed, and to whom the shares of the within named [*original mortgagor*] have been transferred) (hereinafter called “the borrower”), of the one part, and the within named society (hereinafter called “the society”), of the other part; WHEREAS the society have, on the request of the borrower, agreed to advance him the further sum of £—, in respect of his — additional advanced shares therein for the term of — years, and the borrower has agreed to pay a premium for such advance, which for the said term of — years amounts to the sum of £—, and according to the rules and bye-laws of the society is to be added to and treated as part of the principal of such advance, and has also agreed to repay the said further advance and premium with interest by monthly instalments as hereinafter mentioned: NOW THIS DEED WITNESSETH that, in consideration of the premises and of the sum

“(b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

“(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

“This sub-section applies whether or not the prior mortgage was made expressly for securing further advances.”

Stamp.

(*t*) Stamp, *ad valorem* on amount of further advance and premium. For a form of mortgage to a building society, see Precedent XXV., *ante*, p. 77. See the notes to that precedent.

of £—— now paid to the borrower out of the funds of the society (being the full amount of his said —— additional advanced shares therein), as he hereby acknowledges; he the borrower hereby covenants with the society that he the borrower will, during the continuance of this security, duly and punctually pay to the society the additional monthly subscription of £—— on the first Monday in every calendar month, commencing with the month of —— next, until the whole of the additional sum of £—— (being the aggregate amount of the said further advance and premium), and interest from the day of the date hereof, shall be fully paid to the society, or discharged, and will also from time to time duly and punctually pay to the society all fines and fees and other moneys payable by the borrower in respect of his additional advanced shares, in accordance with the rules and bye-laws of the society in that behalf, and as within stated; AND it is hereby agreed, and the borrower, as beneficial owner, doth hereby declare, that all and singular the hereditaments and premises within described shall, with their appurtenants, henceforth stand and be charged as a security to the society for the payment as well of the original advance of £—— and interest secured by the within written deed, and of the fines and fees payable in respect thereof, as of the said sum of £—— with interest as aforesaid, and the fines and fees payable in respect thereof; AND that all the powers, provisoes, and agreements contained in the within written deed for better securing the payment of the moneys, fines, and fees thereby secured or otherwise in respect thereof, shall extend and be applicable to secure the payment of the moneys, fines, and fees hereby covenanted to be paid in the same manner as if such powers, provisoes, and agreements were herein repeated with reference to all the moneys, fines, and fees secured by the within written deed and these presents respectively.

XLIV. FURTHER CHARGE TO BUILDING SOCIETY.

Covenants by borrower to pay additional monthly subscriptions;

that mortgaged premises shall be charged with repayment of further advance and premium.

IN WITNESS, &c.

XLV. DIS-
CHARGE OF A
MORTGAGE.

XLV. FORM of RECEIPT on DISCHARGE of a MORTGAGE (*u*).

I, A. B. [*mortgagee*], of, &c., hereby acknowledge that I have this — day of —, 19—, received the sum of £—, repre-

(*u*) This is the form (No. 2) given in the third schedule to the L. P. A. 1925. A note is added as follows: "If the persons paying are not entitled to the equity of redemption, state that they are paying the money out of a fund applicable to the discharge of the mortgage."

By sect. 115 of the Act, it is provided as follows:—

"(1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release,—

"(a) where a mortgage takes effect by demise or sub-demise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;

"(b) where the mortgage does not take effect by demise or sub-demise as a reconveyance thereof to the extent of the interest which is the subject-matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

"and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

"(2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him; unless—

"(a) it is otherwise expressly provided; or

"(b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

"(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

"(4) This section does not affect the right of any person to require a re-assignment, surrender, release, or transfer to be executed in lieu of a receipt.

"(5) A receipt may be given in the form contained in the third schedule to this Act, with such variations and additions, if any, as may be

sending the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written

XLV. DIS-
CHARGE OF A
MORTGAGE.

deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a reconveyance under seal.

“(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

“(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

“(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Act, but only as respects discharges effected after such commencement.

“(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.”

[See Building Societies Act, 1874, s. 42; Friendly Societies Act, 1896, s. 53; and Industrial and Provident Societies Act, 1893, s. 43. By sect. 42 of the Building Societies Act, 1874, a receipt in the following form, indorsed on or annexed to the mortgage deed, is sufficient to vest the mortgaged property “in the person for the time being entitled to the equity of redemption.”

“The — Building Society hereby acknowledge to have received all moneys intended to be secured by the within [or, above] written deed. Form of
receipt.

“In witness whereof the seal of the society is hereto affixed this — day of —, 19—, by order of the board of directors [or, committee of management] in the presence of

“—, Secretary [or, Manager].

“[Other witnesses (if any) required by the rules of the society.]”]

**XLV. DIS-
CHARGE OF A
MORTGAGE.**

[annexed] mortgage [and by a further charge dated, &c., *or otherwise as required*] together with all interest and costs, the payment having been made by C. D., of, &c., and E. F., of, &c.

AS WITNESS, &c. (x).

“(10) This section does not apply to the discharge of a charge or incumbrance registered under the L. R. A. 1925.” (See sect. 35 of the L. R. A.)

“(11) In this section ‘ mortgaged property ’ means the property remaining subject to the mortgage at the date of the receipt.”

It will be observed that the statutory receipt does not necessarily cause a term to merge unless (1) the receipt is given by the mortgagee, *and* (2) the payment is made by the person entitled to the immediate equity of redemption or by some other person and it is stated that the receipt shall not operate as a transfer, or by a personal representative or trustee out of capital money applicable for the discharge of the mortgage without (in the latter case, and if it is permissible to keep the term alive) an express statement that the receipt is to operate as a transfer. Otherwise the statutory receipt will operate as a transfer of the mortgage to the person making the payment.

For the above reason, in the proviso for redemption used in these forms, it is not stated that on payment the term shall cease, for if the effect of the receipt is merely to transfer the mortgage, the mortgage term will of course remain subsisting for the protection of the transferee. Moreover, such an express provision is, it is submitted, unnecessary, for, by sect. 116, “without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.” (See also sect. 5.)

In the proviso for redemption, it appears advisable to ensure that the mortgagee shall give the statutory receipt, as evidence of payment, immediately the money is paid over.

Sub-sect. (6), by providing that covenants shall be implied in the statutory receipt, renders it unnecessary in most cases to insist upon a formal surrender or reconveyance. But sub-sect. (4) gives the payer a right to demand a more formal instrument, if circumstances should render this desirable, and in the proviso for redemption employed in these forms the statutory words “re-assignment, surrender, release, or transfer” are, in most cases, inserted, whether or not all these words are actually required in respect of the property dealt with in any particular form. The proviso can thus be used for all kinds of property—any inapplicable words being

Stamp.

(x) Stamp, *ad valorem* at the rate of 6*d.* per 100*l.* or part of 100*l.* “at any time secured by” the mortgage: Stamp Act, 1891, sched. *tit.* Mortgage, &c. (5).

XLVI. RECONVEYANCE of FREEHOLD LANDS by SURRENDER of MORTGAGE TERM (by DEED INDORSED (y)) where the MORTGAGE was made prior to 1926.

**XLVI.
RECONVEYANCE
OF FREEHOLD
LANDS.**

THIS DEED (z), made the — day of —, 19—, BETWEEN the within named [mortgagee], of the one part, and the within named [mortgagor], of the other part; WHEREAS, under and by virtue of the Law of Property Act, 1925, the lands and hereditaments comprised in the within written indenture have become and are now vested in the said [mortgagee] for a term of three thousand years from the 1st day of January, 1926, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at the commencement of the said Act, was subsisting with respect to the fee simple (a): NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest due under the within written indenture having been paid (of which principal money and interest the said [mortgagee] hereby acknowledges the receipt), the said [mortgagee] hereby, as mortgagee, surrenders and releases unto the said [mortgagor], ALL the lands and hereditaments comprised in the within written indenture and now vested in the said [mortgagee] for a term of three thousand years as aforesaid; To HOLD

Parties.

Testatum.

Reconvey-
ance.

at least harmless—and the draftsman is saved the trouble of altering the proviso if, for example, real and personal property should be included in one mortgage.

(y) If the mode of engrossment of the mortgage and other circumstances admit, it is advisable that a reconveyance should be by indorsement, so that the mortgage may bear upon it the evidence of the discharge of the mortgage debt. In the case of settled land the tenant for life should be a party to the reconveyance. If he pays off the mortgage out of his own moneys he is entitled to a charge on the inheritance (*Adams v. Angell*, L. R. 5 Ch. D. 634; *Gifford v. Fitzhardinge*, [1899] 2 Ch. 32); but in that case it would be better for him to take a transfer of the mortgage, the right to do which is recognised by sect. 116 of the L. P. A. 1925. As to keeping the mortgage on foot for the benefit of the owner of the equity of redemption, see *Thorne v. Cann*, [1895] A. C. 11; *Liquidation Estates Purchase Co. v. Willoughby*, [1898] A. C. 321; *Capital and Counties Bank v. Rhodes*, [1903] 1 Ch. 631; *Re Gibbon*, [1909] 1 Ch. 367; and see now sub-sect. (3) of sect. 115 of the L. P. A. 1925.

Form of
reconveyance.

(z) Stamp, see *ante*, p. 138, note (x).

(a) See the L. P. A. 1925, Sch. I., Part VII., para. 1.

Stamp.

XLVI.
RECONVEYANCE
OF FREEHOLD
LANDS.

the same unto the said [*mortgagor*] free and discharged from all principal money and interest secured by and from all claims and demands under the said indenture, and to the intent that the said term of three thousand years created as aforesaid shall absolutely merge and become extinguished in the fee simple of the same hereditaments.

IN WITNESS, &c.

XLVII. RE-ASSIGNMENT *of a POLICY of ASSURANCE
and other PERSONAL PROPERTY, MORTGAGED by ASSIGN-
MENT, by DEED SUPPLEMENTAL to the MORTGAGE.*

Parties.

THIS DEED (*b*), made the — day of —, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*mortgagor*], of, &c., of the other part; AND supplemental to an indenture of mortgage, dated the — day of —, 19—, and made between the said [*mortgagor*] of the one part, and the said [*mortgagee*], of the other part, for securing the sum of £—, and interest thereon as therein is mentioned; WITNESSETH, that in consideration of all principal money and interest secured by the principal indenture having been paid (of which principal money and interest the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*] hereby, as mortgagee, assigns and releases unto the said [*mortgagor*], ALL THAT the policy of assurance and all other the property described in the principal indenture; To HOLD the same unto the said [*mortgagor*] henceforth freed and discharged from all principal money and interest secured by, and from all claims and demands under, the principal indenture.

Testatum.
Reconvey-
ance.

IN WITNESS, &c.

Stamp.

(*b*) Stamp, see *ante*, p. 138, note (*x*).

XLVIII. SURRENDER of MORTGAGE TERM, created by
way of UNDERLEASE, on PAYMENT of MORTGAGE
DEBT (c).

XLVIII. SUR-
RENDER OF
UNDERLEASE
TO
MORTGAGOR.

THIS DEED (d), made the — day of —, 19—, BETWEEN [mortgagee], of, &c., of the one part, and [mortgagor], of, &c., of the other part; WHEREAS, by an indenture, dated the — day of —, 19—, made between the said [mortgagor], of the one part, and the said [mortgagee], of the other part, the said [mortgagor] demised unto the said [mortgagee], his executors, administrators, and assigns, ALL THAT [describe parcels], with the appurtenances thereunto belonging; To HOLD the same for (e) the residue then unexpired of a term of ninety-nine years, created by an indenture of lease therein recited, dated the — day of —, and commencing from the date of the said indenture of lease, except the last day of the said term; subject to a proviso for redemption on payment by the said [mortgagor], his executors, administrators, or assigns, unto the said [mortgagee], his executors, administrators, or assigns, of the principal sum of 1,000*l.* and interest, on a day long since past; AND WHEREAS the sum of 400*l.*, part of the said principal sum of 1,000*l.*, has since been paid by the said [mortgagor] to the said [mortgagee], as the said [mortgagee] hereby acknowledges; AND WHEREAS the principal sum of 600*l.* still remains owing to the said [mortgagee] on his said mortgage security, but all interest thereon has been fully discharged up to the date hereof, as the said [mortgagee] hereby acknowledges: NOW THIS DEED WITNESSETH, that in consideration of the sum of 600*l.* now paid by the said [mortgagor] to the said [mortgagee], in full satisfaction of all moneys now owing under the hereinbefore recited indenture of

Parties.

Recital of
mortgage;

that money
was not paid
on the day
appointed,
but part has
since been
paid;

that remain-
ing principal
sum is still
due.

Testatum.

(c) As to the necessity for a surrender in the case of a mortgage by sub-demise, see *Re Moore and Hulm's Contract*, [1912] 2 Ch. 105; but see now sect. 115 (8) of the L. P. A. 1925.

(d) Stamp, see *ante*, p. 138, note (x).

Stamp.

(e) If the term was originally created by a tenant in fee simple and it is intended that the term shall merge in the fee, say,

"for the term of [3,000] years thence next ensuing; subject to a proviso for redemption, on payment by the said [mortgagor], his executors, administrators, or assigns, unto the said [mortgagee]," &c.

Variation
where mort-
gage term
was created
immediately
out of the fee.

XLVIII. SURRENDER OF UNDERLEASE TO MORTGAGOR.

Surrender to mortgagor.

mortgage (the receipt of which sum of 600*l.* the said [*mortgagee*] hereby acknowledges), the said [*mortgagee*] hereby, as mortgagee, surrenders and releases unto the said [*mortgagor*], ALL and singular the premises comprised in and demised by the hereinbefore recited indenture of mortgage, with the appurtenances thereunto belonging; to the intent that the residue now unexpired of the term granted by the hereinbefore recited indenture of mortgage, and all other the term and interest (if any) of the said [*mortgagee*] therein, may be merged in the immediate reversion (*f*) of the same premises.

IN WITNESS, &c.

XLIX. RECONVEYANCE (*by SURRENDER of a MORTGAGE TERM created out of FREEHOLDS*) *by the EXECUTORS of a TRANSFEREE of a MORTGAGE (g), and DEED of FURTHER CHARGE (by SUPPLEMENTAL DEED).*

Parties.

THIS SURRENDER OF MORTGAGE (*h*), made the — day of —, 19—, BETWEEN [*executor*], of, &c., and [*executor*],

Variation.

(*f*) “freehold reversion and inheritance.”

Devolution of mortgage estates.

(*g*) On the death, after 1881, of a person in whom solely hereditaments were vested by way of mortgage, the same devolved by sect. 30 of the Conveyancing Act, 1881, to his personal representatives like a chattel real. By sect. 45 of the Copyhold Act, 1887, it was provided that sect. 30 of the C. A. 1881, should not apply to copyholds vested in the tenant on the rolls. Sect. 88 of the Copyhold Act, 1894 (which repealed sect. 45 of the Act of 1887), enacted that sect. 30 of the C. A. 1881, shall not apply to copyholds vested in the tenant on the rolls on trust or by way of mortgage. As to a sole mortgagee who died between 7th August, 1874, and 1st January, 1882, see V. & P. Act, 1874, s. 4.

Now, by the A. E. A. 1925:—

Sect. 1 (1).—“Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.”

And by sect. 3 (1) of the same Act, “real estate” includes:—

“(i) Chattels real, and land in possession, remainder, or reversion,

Stamp.

(*h*) Stamp, see *ante*, p. 138, note (*x*).

of, &c., of the one part, and [mortgagor], of, &c., of the other part; AND supplemental to the several indentures of mortgage, further charge and transfer of mortgage specified, with the dates thereof and parties thereto respectively in the schedule hereto; WHEREAS [transferee], named in the said indenture of transfer of mortgage, died on the — day of —, 19—, without having revoked or altered his will, dated the — day of —, 19—, whereby he appointed the said [executors] to be executors thereof, who duly proved the same on the — day of —, 19—, in the Principal Probate Registry: NOW THIS DEED WITNESSETH, that in consideration of the sum of £— now paid by the said [mortgagor] to the said [executors], in full satisfaction of all money secured by the said indentures of mortgage and further charge respectively (the receipt of which sum is hereby acknowledged), the said [executors], as personal representatives (i) of the said [transferee], hereby surrender and release to the said [mortgagor], ALL the lands and hereditaments described in the said indenture of mortgage; To HOLD the same unto the said [mortgagor], freed and discharged from all principal moneys and interest secured by and from all claims and demands under the said indentures of mortgage and further charge respectively, and to the intent that the term of three thousand years from the commencement of the Law of Property Act, 1925, and created by virtue of the said Act shall forthwith merge in the fee simple of the same hereditaments and become extinguished accordingly.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

25th March, 1910.—Indenture of mortgage made between [mortgagor], of, &c., of the one part, and [mortgagee], of, &c., of the other part, to secure the payment on the 25th day of Septem-

and every interest in or over land to which a deceased person was entitled at the time of his death; and

“(ii) Real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.”

(i) As to implied covenant against incumbrances, see the L. P. A. 1925, s. 76 (1) (F.), and Part VI. of the second schedule to the Act.

XLIX. RE-
CONVEYANCE
BY EXECUTORS
OF
TRANFERRER.

Recital of
death of
transferee and
appointment
of executors
of his will.

Testatum.

Reconvey-
ance.

XLIX. RE-
CONVEYANCE
BY EXECUTORS
OF
TRANSFeree.

ber, 1901, of the sum of 1,000*l.* and interest thereon, at — per cent. per annum.

1st January, 1912.—Indenture of further charge, made between the same parties, to secure the payment on the — day of —, 1902, of the further sum of 500*l.* and interest thereon at the rate aforesaid.

5th September, 1923.—Indenture of transfer, made between the said [*mortgagee*], of the first part; the said [*mortgagor*], of the second part; and [*transferee*], of, &c., of the third part; WHEREBY the said sums of 1,000*l.* and 500*l.*, and the securities for the same respectively, were transferred to the said [*transferee*].

L. FORM of TRANSFER of MORTGAGE (*k*). *Law of Property Act, 1925, Third Schedule [Form No. 1].*

THIS TRANSFER OF MORTGAGE, made the — day of —, 19—, BETWEEN [*mortgagee*], of, &c., of the one part, and [*transferee*], of, &c., of the other part; Supplemental to a mortgage, dated the — day of —, and made between [*parties*], and to a Further Charge, dated the — day of —, and made between [*parties*], affecting, &c. (*here state short particulars of the mortgaged property*): WITNESSETH that, in consideration of the sums of £— and £— (for interest) now paid by the said [*transferee*] to the said [*mortgagee*], being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums the said [*mortgagee*] hereby acknowledges), the said [*mortgagee*], as mortgagee (*l*), hereby conveys and transfers to the said [*transferee*] the benefit of the said mortgage and further charge.

IN WITNESS, &c.

(*k*) See sect. 114 of the L. P. A. 1925 (*infra*, p. 148).

(*l*) See sect. 76 (1) (F.) of the L. P. A. 1925, and Part VI. of the second schedule to that Act.

LI. STATUTORY TRANSFER, MORTGAGOR *not* JOINING.
Law of Property Act, 1925, Fourth Schedule
[Form No. 2](m).

LI.
 STATUTORY
 TRANSFER OF
 MORTGAGE.

THIS TRANSFER OF MORTGAGE (n), made by way of statutory transfer the — day of —, 19—, BETWEEN [mort- Parties.
 gagee], of, &c., of the one part, and [transferee], of, &c., of the other part; Supplemental to a legal charge made by way of statutory mortgage, dated the — day of —, 19—, and made between [parties]: WITNESSETH, that in consideration of the Testatum.
 sum of £— now paid to the said [mortgagee] by the said

(m) As to the effect of a statutory transfer, see L. P. A. 1925, ss. 118, Effect of
 119. The mortgagor's concurrence in a transfer of mortgage should always statutory
 be obtained if possible, so as to prevent any questions arising as to the state transfer.
 of accounts and the existence of equities as between the mortgagor and mortgagee, or as to the mortgagor having received notice of the transfer, or as to the continuance to the transferee of the mortgagee's powers. Moreover, if the interest has been duly paid and no notice to pay off has been given, the costs of a transfer, without the concurrence of the mortgagor, cannot be added to the mortgagee's costs of the security: *Re Radcliff*, 22 Beav. 201. If the mortgagor is not a party to the transfer, the transferee should at once give him notice thereof.

As to the mortgagor's right to require the mortgagee to transfer instead Mortgagor's
 of reconveying, see sect. 95 of the L. P. A. 1925. Query, whether right to
 sect. 95 (re-enacting sect. 15 of the C. A. of 1881) applies to a building require
 society's mortgage: *Re Rumney and Smith*, [1897] 2 Ch. 351. As to the transfer.
 rights of successive incumbancers, see *Teevan v. Smith*, 20 Ch. D. 724. As to form and effect of statutory transfers, see the L. P. A. 1925, s. 118. The forms which are contained in the fourth schedule to that Act may be varied and added to as circumstances may require. The statutory transfer (under the C. A. 1881) was held to be available to pass the legal estate only when the mortgage was statutory: *Re Beachey*, [1904] 1 Ch. 67. As to the rights of a tenant for life where the equity of redemption is in settlement, see *Alderson v. Elgey*, 26 Ch. D. 567.

(n) Stamp, 6d. for every 100l. and fractional part of 100l. of the Stamp.
 amount of the mortgage debt assigned, exclusive of interest which is not in arrear. If interest in arrear is assigned, *ad valorem* duty at the same rate must be paid on it, even if the consideration is less than the whole amount of principal and interest. Where the interest is capitalized, *ad valorem* duty as on a mortgage is payable on the amount of such interest. As to stamps on transfers of mortgage, see the Stamp Act, 1891, s. 87, and the schedule to that Act, *tit.* Mortgage, &c.; the L. P. A. 1925, s. 118 (4); *Wale v. I. R. Commissioners*, L. R. 4 Ex. D. 270; *Humphreys v. I. R. Commissioners*, 81 L. T. 199; and *Alpe on Stamp Duties*.

LI.
STATUTORY
TRANSFER OF
MORTGAGE.

Transfer of
mortgage.

[*transferee*] (being the aggregate amount of £—— mortgage money and £—— interest due in respect of the said legal charge, of which sum the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*], as mortgagee (*o*), hereby conveys and transfers to the said [*transferee*] the benefit of the said legal charge.

IN WITNESS, &c.

LII. STATUTORY TRANSFER, a COVENANTOR JOINING
[*Form No. 3*] (*p*).

Parties.

Testatum.
Transfer of
mortgage.

THIS TRANSFER OF MORTGAGE, made by way of statutory transfer the —— day of ——, 19——, BETWEEN [*mortgagee*], of, &c., of the first part; [*mortgagor*], of, &c., of the second part; and [*transferee*], of, &c., of the third part: Supplemental to a legal charge made by way of statutory mortgage, dated the —— day of ——, 19——, and made between [*parties*]: WITNESSETH that, in consideration of the sum of £—— now paid to the said [*mortgagee*] by the said [*transferee*] (being the mortgage money due in respect of the said legal charge, no interest being now due or payable thereon of which sum the said [*mortgagee*] hereby acknowledges the receipt), the said [*mortgagee*], as mortgagee (*o*), with the concurrence of the said [*mortgagor*], who joins herein as covenantor (*q*), hereby conveys and transfers to the said [*transferee*] the benefit of the said legal charge.

IN WITNESS, &c.

LIII. STATUTORY TRANSFER and MORTGAGE COMBINED
[*Form No. 4*].

THIS TRANSFER AND LEGAL CHARGE (*r*) is made by way of statutory transfer and mortgage, the —— day of ——,

(*o*) The words "as mortgagee" imply a covenant against incumbrances by the transferor, both as to the mortgage debt and as to the mortgaged property: see sect. 76 (1) (F.) of the L. P. A. 1925, and Part VI. of the second schedule to that Act (re-enacting, with additions, sect. 7 (1) (F.) of the Conveyancing Act, 1881).

(*p*) As to stamp and other matters, see notes to last precedent.

(*q*) See the L. P. A. 1925, s. 118 (3) (and see also Conveyancing Act, 1881, s. 27 (3); and *Bolton v. Buckenham*, [1891] 1 Q. B. 278).

Stamp.

(*r*) Stamp, *ad valorem* at the rate of 6d. per 100l. or part of 100l. of

III.
STATUTORY
TRANSFER
AND
MORTGAGE
COMBINED.

Parties.

Recitals:
of state of
mortgage
debt;
of title of
mortgagor.
Testatum.

Transfer of
mortgage
debt.

Second
testatum.

Transfer and
mortgage of
property.

19—, BETWEEN [*mortgagee*], of, &c., of the first part; [*mortgagor*], of, &c., of the second part; and [*transferee*], of, &c., of the third part: Supplemental to a legal charge made by way of statutory mortgage, dated the — day of —, and made between [*parties*]; WHEREAS a principal sum of £—— only remains due in respect of the said legal charge as the mortgage money, and no interest is now due thereon: AND WHEREAS the said [*mortgagor*] is seised in fee simple of the land comprised in the said legal charge, subject to that charge: NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the sum of £—— now paid to the said [*mortgagee*] by the said [*transferee*] (the receipt and payment of which sum the said [*mortgagee*] and [*mortgagor*] hereby respectively acknowledge [*in the case of a further advance, insert here*: “and of the further sum of £—— now paid by the said [*transferee*] to the said [*mortgagor*], of which sum the said [*mortgagor*] hereby acknowledges the receipt” (s)), the said [*mortgagee*], as mortgagee (t), hereby conveys and transfers to the said [*transferee*] the benefit of the said legal charge.

2. For the consideration aforesaid, the said [*mortgagor*] as beneficial owner [*in the case of a further advance, say*: “as mortgagor and as beneficial owner,” as well as where the said [*mortgagor*] is not the original mortgagor (t), hereby charges by way of legal mortgage ALL the premises comprised in the said legal charge, with the payment to the said [*transferee*], on the — day of —, 19—, of [*in the case of a further advance, insert*: “the sums of £—— and £——, making together”] the

the amount assigned, and at the rate of 2s. 6d. per 100l. or part of 100l. of the further advance.

(s) Compare the form as printed in the fourth schedule, where the additions are given by way of footnotes.

(t) If there is a further advance, or if the mortgagor is not the original mortgagor, the mortgagor should charge “as mortgagor” to import the covenant for payment of principal and interest under sect. 117 of the L. P. A. 1925; and “as beneficial owner” to imply the covenants for title under sect. 76 (1) (C.) of the same Act; and Part III. of the second schedule thereto.

LIII.
STATUTORY
TRANSFER
AND
MORTGAGE
COMBINED.

sum of £—— as the mortgage money with interest thereon, at the rate of —— per centum per annum.

IN WITNESS, &c. (*u*).

LIV. TRANSFER of MORTGAGE (*x*) of FREEHOLDS by INDORSEMENT, *the MORTGAGOR not being a PARTY (y).*

Parties.

THIS TRANSFER OF MORTGAGE (*z*), made the —— day of ——, 19——, BETWEEN the within named [*mortgagee*] (herein-

(*u*) To Form No. 4, in the fourth schedule to the Act, is added the following:—

“*Note*.—Variations to be made, as required, in the case of the deed being by indorsement, or in respect of any other thing.”

(*x*) By sect. 114 of the L. P. A. 1925:—

“(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

“(a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

“(b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

“(c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

“(2) In this section ‘transferee’ includes his personal representatives and assigns.

“(3) A transfer of mortgage may be made in the form contained in the third schedule to this Act with such variations and additions, if any, as the circumstances may require. (See *supra*, p. 144.)

“(4) This section applies, whether the mortgage transferred was made

Non-concurrence of mortgagor.

(*y*) As to the advisability of obtaining the concurrence of the mortgagor, see *ante*, p. 145, note (*m*). Notice of the transfer should be given to the mortgagor.

Stamp.

(*z*) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of the amount transferred. See *ante*, p. 145, note (*n*), as to inclusion of interest in arrear.

after called "the mortgagee"), of the one part, and the within named [*transferee*] (hereinafter called "the transferee"), of the other part; WHEREAS the within mentioned sum of £—, with interest thereon from the — day of —, is now owing to the mortgagee on the security of the within written indenture of mortgage as the mortgagee hereby declares; AND WHEREAS the transferee has agreed to pay to the mortgagee the said sum of £— and the sum of £—, being the amount of the interest so owing as aforesaid, making together the sum of £—, upon having such transfer as is hereinafter contained, of the benefit of the said mortgage: NOW THIS DEED WITNESSETH that in consideration of the sum of £— now paid to the mortgagee by the transferee (the receipt whereof is hereby acknowledged), the mortgagee hereby, as mortgagee, conveys and transfers to the transferee the benefit of the said mortgage.

IN WITNESS, &c.

LIV.
TRANSFER OF
MORTGAGE OF
FREEHOLDS.

Recitals:
of state of
mortgage
debt;
of agreement
for transfer.

Testatum.
Transfer
of mortgage.

LIV. TRANSFER of MORTGAGE of FREEHOLDS, COPYHOLDS (*which have not been SURRENDERED*), and LEASEHOLDS, *the MORTGAGE having been made prior to the 1st January, 1926, the MORTGAGOR being a PARTY, and RECEIVING a FURTHER ADVANCE.*

THIS TRANSFER OF MORTGAGE (*a*), made the — day of —, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the first part; [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*transferee*], of, &c. (hereinafter called "the transferee"), of the third part; AND supplemental to an indenture of mortgage (hereinafter called "the principal deed"), dated the — day of —, 19—, and made between the borrower, of the one part, and the mort-

Parties.

before or after the commencement of this Act [January 1st, 1926], but applies only to transfers made after the commencement of this Act.

"(5) This section does not extend to a transfer of a bill of sale of chattels by way of security."

It will be observed that, by para. (c), no express assignment of a mortgage term is necessary to vest the same in the transferee.

(a) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* of mortgage debt assigned and as a mortgage on amount of further advance.

LV.
TRANSFER OF
MORTGAGE OF
FREEHOLDS,
COPYHOLDS
NOT SURREN-
DERED, AND
LEASEHOLDS.

gagee, of the other part, whereby the freehold hereditaments described in the first schedule hereto were granted unto and to the use of the mortgagee, his heirs and assigns, subject to a proviso for redemption thereof on payment on the day therein mentioned of the sum of £—, with interest thereon as therein mentioned, and which deed contained a covenant by the borrower for the surrender of the copyhold hereditaments described in the second schedule hereto, subject to a proviso for avoiding such surrender on payment of the said sum of £— and interest as therein mentioned, and by the same deed the leasehold hereditaments described in the third schedule hereto were assigned [demised] unto the mortgagee for the residue of a term of — years granted by the indenture of lease dated the — day of — therein mentioned [less the last day of such term], subject to such proviso for redemption as aforesaid; WHEREAS no surrender was made of the copyhold hereditaments comprised in the principal deed pursuant to the covenant in that behalf contained in the same deed; AND WHEREAS the said sum of £— now remains owing on the security of the principal deed, but all interest for the same has been paid up to the date of these presents; AND WHEREAS the transferee has agreed, at the request of the borrower, to pay to the mortgagee the sum of £—, and to lend to the borrower the further sum of £—, making together the aggregate sum of £—, upon having the repayment of the said aggregate sum of £—, with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

Recitals:
as to sur-
render;

of state of
mortgage
debt;
of agreement
for transfer
and further
advance.

Testatum.

Transfer of
mortgage.

1. In pursuance of the said agreement, and in consideration of the sum of £— [*original mortgage debt*] now paid to the mortgagee by the transferee at the request of the borrower (the receipt whereof is hereby acknowledged), and of the sum of £— [*further advance*] now paid to the borrower by the transferee, the payment and receipt respectively of which sums of £— and £—, making together the aggregate sum of £—, the borrower hereby acknowledges, the mortgagee, at the request of the borrower, hereby, as mortgagee, conveys and transfers unto the transferee the benefit of the said mortgage secured by the principal deed.

Second
testatum.

2. For the considerations aforesaid, the mortgagor hereby cove-

nants, &c. [covenant for payment of aggregate principal sum and interest, ante, p. 127, substituting "mortgagee" for "lenders"].

3. For the consideration aforesaid, the borrower, as beneficial owner, hereby charges by way of legal mortgage the premises comprised in the principal deed, with the payment to the transferee of the principal money and interest hereinbefore covenanted to be paid, being the said further sum of £—— and interest thereon as aforesaid, as well as the principal money, interest, and other money secured by the principal deed.

4. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the —— day of ——, 19——, pay to the transferee the sum of £—— [aggregate amount of original debt and further advance], and interest thereon at the rate aforesaid, then the transferee will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower, his executors, administrators, or assigns shall so require, execute at the cost of the person or persons requiring the same, a re-assignment, surrender, release, or transfer of the said premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

5. IT IS HEREBY AGREED that the proviso in the principal deed contained for the reduction of the rate of interest on the said sum of £—— [original debt] thereby secured shall extend and be applicable to the principal moneys and interest hereby secured, as if such proviso were herein repeated with the substitution therein of the said sum of £—— [the aggregate amount] for the said sum of £—— [original debt] secured by the principal deed.

6. IT IS HEREBY ALSO AGREED that all covenants, trusts, powers, and provisions in and by the principal deed contained and implied by virtue of any statute, or otherwise, for securing the payment of the said sum of £—— [original debt], and the interest thereon shall extend to and be applicable so as to be also a security for the said sum of £—— [further advance], and the interest thereon as if the said sum of £—— [further advance] had

LV.
TRANSFER OF
MORTGAGE OF
FREEHOLDS,
COPYHOLDS
NOT SURREN-
DERED, AND
LEASEHOLDS.

Covenant for
payment.

Third
testatum.

Further
charge.

Proviso for
redemption.

As to reduc-
tion of inter-
est on
punctual
payment (b).

Powers and
provisions in
original mort-
gage to extend
to further
advance.

(b) If the half-yearly days of payment of interest are changed a new proviso for reduction will be substituted for this clause: for such a proviso, see ante, p. 14.

LV.
TRANSFER OF
MORTGAGE OF
FREEHOLDS,
COPYHOLDS
NOT SURREN-
DERED, AND
LEASEHOLDS.

Proviso as to
insurance
against fire.

formed part of the principal moneys secured by the principal deed. [Except and provided nevertheless that the total amount of the insurance of buildings and insurable property against fire to be effected and kept on foot henceforth by the borrower, his executors, or administrators, shall be the sum of £—, instead of the sum of £—, as mentioned in the covenant in that behalf contained in the principal deed.]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Freeholds.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Enfranchised Copyholds.*)

THE THIRD SCHEDULE ABOVE REFERRED TO.

(*Leaseholds.*)

LVI. TRANSFER of a MORTGAGE of a REVERSIONARY INTEREST in PERSONALTY and a POLICY of INSURANCE on the LIFE of the MORTGAGOR, where INTEREST in ARREAR is CAPITALISED and the MORTGAGOR receives a FURTHER ADVANCE (c).

Parties.

THIS TRANSFER OF MORTGAGE (d), made the — day of —, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called “the mortgagee”), of the first part; [*mortgagor*], of, &c. (hereinafter called “the borrower”), of the second part; and [*transferee*], of, &c. (hereinafter called “the transferee”), of the third part; AND supplemental to an indenture of mortgage dated the — day of —, 19—, and made between the borrower, of the one part,

(c) Sect. 114 of the L. P. A. 1925, applies to the mortgage hereby transferred, whether made before or after the commencement of the said Act (see sub-sect. (4)), and, if desired, the transfer may be made in the form contained in the third schedule to the Act (see *ante*), with such variations and additions as may be required.

(d) Stamp, *ad valorem* at the rate of 6d. per 100l. or part of 100l. of original mortgage debt, and also *ad valorem* as a mortgage on fresh advance and interest capitalized.

and the mortgagee, of the other part, for securing the payment of a principal sum of £—— and interest thereon at the rate of —— per cent. per annum (which indenture is hereinafter called “the principal indenture”): WHEREAS the principal sum of £——, and also the sum of £—— for interest in arrear from the —— day of ——, 19——, making together the sum of £——, is now owing on the security of the principal indenture; AND WHEREAS the transferee has agreed, at the request of the borrower, to pay to the mortgagee the said sum of £—— [*aggregate amount of principal and interest*], and to lend to the borrower the further sum of £——, making together the aggregate sum of £—— upon having such transfers as are hereinafter contained of the said principal sum and interest secured by the principal indenture and of the securities for the same, and upon having the repayment of the said aggregate sum of £—— further secured in manner herein-after appearing: NOW THIS DEED WITNESSETH as follows:—

LVI.
TRANSFER OF
MORTGAGE OF
RE-
VERSIONARY
INTEREST IN
PERSONALTY.

Recitals:
of state of
mortgage
debt;
of agreement
for transfer
and further
advance.

Testatum.

Assignment
of mortgage
debt.

Second
testatum.

Covenant for
payment of
principal and
interest.

Third
testatum.

Assignment
of rever-

1. In pursuance of the said agreement and in consideration of the sum of £—— [*original mortgage debt*] now paid to the mortgagee by the transferee at the request of the borrower (the receipt whereof is hereby acknowledged), and of the sum of £—— [*further advance*] now paid to the borrower by the transferee, the payment and receipt respectively of which sums of £—— and £——, making together the aggregate sum of £——, the borrower hereby acknowledges, the mortgagee, at the request of the borrower, hereby, as mortgagee, assigns unto the transferee, ALL THAT the said principal sum of £—— secured by the principal indenture, and all interest due or to become due for the same, and the benefit of all securities for the same: To HOLD unto the transferee absolutely.

2. For the consideration aforesaid the borrower hereby covenants with the transferee to pay to him on the —— day of —— next the said sum of £—— [*aggregate amount of original debt, interest in arrear, and further advance*], with interest for the same at the rate of —— per cent. per annum, and also so long as any principal money shall remain due upon the security of the principal indenture or of these presents, to pay to him interest thereon after the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year.

3. For the consideration aforesaid, the mortgagee, as mortgagee, at the request of the borrower, hereby assigns, and the

LVI.
TRANSFER OF
MORTGAGE OF
RE-
VERSIONARY
INTEREST IN
PERSONALTY.

sionary
interest;
and policy of
assurance.

borrower, as beneficial owner, hereby assigns and confirms unto the transferee, ALL THAT part, share, or interest of him the borrower assigned by the principal indenture of and in the trust funds, stocks, funds, shares, and securities therein mentioned, and of and in the dividends, interest, and annual income thereof; AND ALSO all that the policy of assurance on the life of him the borrower, and moneys assured and assigned by the same indenture, and all other the premises therein comprised and thereby assigned: together with full benefit of all powers, remedies, and provisions by or in the principal indenture conferred or contained for the recovery or enforcing payment or delivery of and giving receipts and discharges for the said premises comprised in the principal indenture or any of them, or otherwise in relation thereto: To HOLD the premises hereby assigned unto the transferee free and discharged from all right or equity of redemption under or by virtue of the principal indenture, but subject to the proviso for redemption hereinafter contained.

Proviso for
redemption.

4. PROVIDED ALWAYS, that if the borrower, his executors, administrators, or assigns, shall, on the — day of — next, pay to the transferee the sum of £— [*the aggregate sum*], and interest thereon at the rate last aforesaid, then the transferee will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt if the borrower, his executors, administrators, or assigns shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer of the premises hereby assigned unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

Powers and
provisions in
original mort-
gage to extend
to further
advance.

5. IT IS HEREBY AGREED that all covenants, trusts, powers, and provisions in and by the principal indenture contained and implied by virtue of any statute, or otherwise, for securing the payment of the said sum of £— [*original debt*], and the interest thereon shall extend to and be applicable so as to be also a security for the said sum of £— [*further advance*], and the interest thereon as if the said sum of £— [*further advance*] had formed part of the principal moneys secured by the principal indenture.

IN WITNESS, &c.

LVII. TRANSFER of a MORTGAGE of FREEHOLDS upon
the APPOINTMENT of a NEW TRUSTEE, the TRUST not
being DISCLOSED (e).

LVII.
TRANSFER
ON APPOINT-
MENT OF NEW
TRUSTEE.

THIS TRANSFER OF MORTGAGE (f), made the — day
of —, 19—, BETWEEN [continuing trustee] of, &c., of the one
part, and [new trustee], of, &c., of the other part; AND supple-
mental to an indenture of mortgage (hereinafter called “the said
mortgage”), dated the — day of —, 19—, and made between
[parties] for securing the sum of £— and interest thereon
at the rate of — per cent. per annum: WHEREAS the said
[original trustee] died on the — day of —, 19—; AND
WHEREAS the principal sum of £—, with interest thereon, from
the — day of — last, is now owing on the security of the
said mortgage, AND WHEREAS the said [continuing trustee] and
[new trustee] have become jointly entitled in equity to the said
principal sum of £— and the interest now due and hereafter
to become due thereon: NOW THIS INDENTURE WIT-
NESSETH that in consideration of the premises the said [con-
tinuing trustee] hereby conveys and transfers to the said [contin-
uing trustee] and [new trustee] the benefit of the said mortgage.

Parties.

Recitals :
of death of
trustee ;
of state of
mortgage
debt ;
of title
thereto.

Testatum.
Transfer
of mortgage.

The said [continuing trustee] and [new trustee] hereby
declare that the moneys secured by the principal indenture and
hereby transferred, belong to them on a joint account (g).

Declaration
that money
belongs to
trustees on
joint account.

The said [continuing trustee] hereby covenants with the said
[new trustee] that he the said [continuing trustee] has not done or

Covenant
against in-
cumbrances
(h).

(e) As to costs of transfer where mortgagor does not concur, see *ante*,
p. 145, note (m). Notice of transfer must be given to the mortgagor.

(f) Stamp, *ad valorem* at rate of 6*d.* per 100*l.* or part of 100*l.* up to
10*s.*: see Stamp Act, 1891, s. 62; and Finance Act, 1902, s. 9. No notice
of a trust is to be implied by reason only of the transfer bearing a 10*s.*
stamp: see L. P. A. 1925, s. 112.

Stamp.

(g) As to the effect of an advance on a joint account, see L. P. A.
1925, s. 111, re-enacting sect. 61 of the C. A. 1881. A joint account
clause is not notice of a trust: see *Re Harman and Uxbridge Railway
Company*, L. R. 24 Ch. D. at p. 726; distinguished in and from *Re
Blaisberg and Abrahams*, [1899] 2 Ch. 340, in which case the trust was
revealed. If the continuing trustee is a married woman, the deed does
not require acknowledgment by her: see L. P. A. 1925, s. 170.

(h) As to the expedience of inserting an express covenant by the con-
tinuing trustee instead of relying on the statutory implied covenant, see
Appointment of New Trustees, *ante*, Vol. I.

LVII.
TRANSFER
ON APPOINT-
MENT OF NEW
TRUSTEE.

knowingly permitted or been party or privy to any act, deed, matter, or thing whereby the premises hereby assigned and granted respectively, or any part thereof respectively, are, is or may be impeached, charged, incumbered, or in any way affected, or whereby the said [*continuing trustee*] is in anywise prevented from assuring the same premises, or any part thereof, in manner aforesaid.

LVIII. DEMISE of FREEHOLDS *by way of* COLLATERAL SECURITY *for a* MORTGAGE DEBT (*i*).

THIS MORTGAGE (*k*), made the — day of —, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called “the borrower”), of the one part, and [*mortgagee*], of, &c. (hereinafter called “the lender”), of the other part: WHEREAS by an indenture of even date herewith, and made between the same persons as are parties to these presents, certain hereditaments situate in the parish of —, in the county of —, and therein particularly described, have been demised to the lender, without impeachment of waste, for a term of 1,000 years to commence from the date thereof, by way of mortgage, to secure the payment, on the — day of —, 19—, to the lender, of the sum of £—, with interest for the same at the rate of — per cent. per annum; AND upon the treaty for the said mortgage it was agreed that such payment should be further secured in manner hereinafter appearing: NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement, and in consideration of the said sum of £— now paid by the lender to the borrower, the receipt whereof is hereby acknowledged, the borrower, as beneficial owner, hereby demises unto the lender [*parcels*]: To HOLD the same unto the lender, without impeachment of waste, for the term of 1,000 years to commence from the date hereof, subject to the proviso for redemption following.

(*i*) Where several estates are mortgaged to secure a single advance it is advisable to keep the titles distinct by having separate mortgages.

(*k*) Stamp, 6*d.* for every 100*l.* and also for every fractional part of 100*l.* of the amount secured (see Stamp Act, 1891, sched. *tit.* Mortgage, &c. (2)), but not to exceed 10*s.*: see Revenue Act, 1903, s. 7.

Collateral
securities.

Stamp.

LVIII.
DEMISE OF
FREEHOLDS
AS SECURITY
FOR
MORTGAGE
DEBT.

2. PROVIDED that if the borrower, his executors, administrators, or assigns shall, on the — day of — next, pay to the lender the sum of £— and interest thereon at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower, his executors, administrators, or assigns shall so require, execute at the cost of the person or persons requiring the same a re-assignment, surrender, release, or transfer of the said premises unto the borrower, his executors, administrators, or assigns, or as he or they shall direct.

3. PROVIDED and it is hereby agreed that the restriction on the right of consolidating mortgage securities which is contained in sect. 93 of the Law of Property Act, 1925, shall not apply to this security.

[*Add any provisions, e.g., covenants as to insurance (see ante, p. 11) or other matters which may be desired with respect to the property comprised in this mortgage.*]

IN WITNESS, &c.

LIX. APPOINTMENT of a RECEIVER (l).

THIS INDENTURE (m), made the — day of —, 19—,
BETWEEN [mortgagee], of, &c. (hereinafter called “the lender”), Parties.

(l) It is in general convenient to make the appointment of a receiver by a separate instrument, in order that it may be placed in his custody and held by him as his authority, if it becomes necessary for him to act. An appointment of a receiver is, however, sometimes included in the mortgage deed: this precedent may be readily adapted to the case of such a mode of appointment. The advantage to the mortgagee of the appointment of a receiver is that it enables him to have the rents and profits applied in liquidation of the interest without placing himself in the position of a mortgagee in possession. The power to appoint a receiver conferred on mortgagees by Lord Cranworth’s Act, ss. 11 and 17, still remains in force as to mortgages prior to 1882: see *Re Solomon and Meagher*, 40 Ch. D. 508. Sect. 101 (1) (iii) of the L. P. A. 1925 (re-enacting with additions sect. 19 (1) (iii) of the C. A. 1881), empowers mortgagees to appoint receivers, whose duties and powers are set out in sect. 109 of the Act, but this power cannot be exercised until the mortgagee

Appointment
of receiver.

(m). A deed stamp of 10s. will be required.

Stamp.

LIX. AP-
POINTMENT
OF RECEIVER
UNDER
POWER IN
MORTGAGE.

Recital of
mortgage;

of the first part; and [*mortgagor*], of, &c. (hereinafter called "the borrower"), of the second part; and [*receiver*], of, &c. (hereinafter called "the receiver"), of the third part: WHEREAS by an indenture of mortgage, dated the — day of —, 19—, and made between the borrower, of the one part, and the lender, of the other part, in consideration of the sum of £— then advanced by the lender to the borrower, the borrower demised the hereditaments and premises described in the schedule hereto unto the lender, without impeachment of waste, for a term of [3,000] years to commence from the date thereof, subject to a proviso for redemption of the same premises on payment by the borrower, his executors, administrators, or assigns, unto the lender, his executors, administrators, or assigns, of the sum of £— and interest at the rate of — per cent. per annum, on the — day of — then next; AND the indenture now in recital contained a covenant by the borrower that [*state fully from the mortgage the covenant for payment of principal and interest, and any provisos relating to the rate or mode of payment of interest, or the maintenance of the property, e.g., for reduction of interest, insurance against fire, keeping up policies of life assurance, &c.*]: AND WHEREAS upon the treaty for the said mortgage, it was agreed that the receiver should be appointed receiver of the rents and profits of the same premises in manner hereinafter expressed, and with and subject to the powers, covenants, and conditions hereinafter contained: NOW THIS DEED WITNESSETH as follows:—

of agreement
for appoint-
ment of a
receiver.

Testatum.

Mortgagor
and mort-
gagee appoint
receiver.

1. In pursuance of the said agreement, and in consideration of the premises, the borrower, with the concurrence of the lender,

"has become entitled to exercise the *power of sale conferred by this Act*" (sect. 109, sub-sect. (1)), and accordingly does not apply except when the statutory power of sale is incorporated in the mortgage deed. Where the appointment is made at the time of the mortgage the old form must be used. A form of appointment under the statutory provisions is given in the next precedent. Where the statutory power applies, the provisions of the Act with regard to the appointment, powers, and duties of receivers seem to be adequate and satisfactory, and it has not been thought necessary in the present collection of precedents to insert any provision in a mortgage deed empowering a mortgagee to appoint a receiver. As to the receiver's liability as agent, see *Owen & Co. v. Cronk*, [1895] 1 Q. B. 265.

hereby appoints the receiver to be receiver, agent, and attorney from time to time, in the name of the borrower, or otherwise to receive from the present and future tenants and occupiers of the several hereditaments and premises respectively mentioned in the schedule hereto (*n*), the rents and profits now due and hereafter to become due, for or in respect of the same premises (*o*); and in default of payment thereof, to use all or any lawful remedies, and generally to do all such acts as shall be necessary or expedient for receiving and recovering the said rents and profits, as fully and effectually as the borrower could do; AND the borrower, with the concurrence of the lender, hereby directs the several tenants and occupiers aforesaid to pay unto the receiver, or any future receiver to be appointed as is hereinafter provided, all the rents and profits of the same premises, or any part thereof respectively, and hereby declares that the receipts of the receiver, or of any such future receiver as aforesaid, shall be effectual discharges for the same; AND the borrower, with the concurrence of the lender, authorises the receiver to make such allowances to and arrangements with the tenants and occupiers aforesaid as he shall think fit.

LIX. AP-
POINTMENT
OF RECEIVER
UNDER
POWER IN
MORTGAGE.

2. IT IS HEREBY DECLARED AND AGREED that the said rents and profits, when so received, shall be applied and disposed of by the receiver, or any such future receiver as aforesaid, in manner following (that is to say), in the first place, in paying all taxes,

Rents, how to
be applied;

(*n*) It will generally be convenient that the particulars of the mortgaged premises should be set out in a schedule to the deed appointing the receiver, for his guidance and information.

(*o*) If preferred, the following short form, referring to the statute, may be substituted for the remainder of the precedent from this point:—

Short form
referring to
the statute.

“AND IT IS HEREBY AGREED that the receiver, or any new receiver to be appointed in his place may be removed, and a new receiver may from time to time be appointed by the lender, his executors, administrators, or assigns, by writing under his or their hand or hands, as and when he or they may think fit; and that all statutory powers of, and provisions relating to receivers appointed under the statutory power in that behalf shall, so far as may be, henceforth be exerciseable by, and apply with respect to the receiver, and any new receiver to be appointed in his place.”

[*Proviso as to commission, &c.*, post, p. 162.]

LIX. AP-
POINTMENT
OF RECEIVER
UNDER
POWER IN
MORTGAGE.

rates, and outgoings, payable in respect of the same premises, which the tenants or occupiers thereof shall not be liable to pay, and all expenses of repairing (*p*) or insuring against loss or damage by fire any buildings or other property which he shall think proper to repair or insure; and in the next place, in retaining and satisfying all necessary and reasonable expenses attending the collection, receipt, or getting in of the said rents and profits; and also a salary, after the rate of £—— per annum, for his own use (*q*); AND in the next place, in paying unto the lender, his executors, administrators, or assigns, the interest to accrue due in respect of the said sum of £——, or upon so much thereof as shall for the time being remain unpaid, by equal half-yearly payments, on the said —— day of —— and —— day of —— in every year, and in paying all principal moneys charged on the mortgaged premises and payable on demand, and the interest thereon [and in paying the premiums or other moneys payable for keeping on foot any policy or policies of assurance for the time being subject to the said mortgage], and the surplus of such rents and profits, if any, shall be paid by the receiver to the borrower, his executors, administrators, or assigns.

Covenant by
receiver.

3. The receiver hereby covenants with the lender, and also as a separate covenant with the borrower, that he the receiver will from time to time, so long as he shall be receiver for the purposes aforesaid, use his utmost endeavours to collect, receive, and get in the said rents and profits, and duly apply the same for the purposes and in manner hereinbefore mentioned.

Covenant by
borrower
in case of
disqualifica-
tion of
receiver to
appoint
another;

4. The borrower hereby covenants with the lender that, in case the receiver, or any future receiver to be appointed as hereinafter mentioned, shall die, or become disqualified or unwilling or unable to act as such receiver, agent, or attorney as aforesaid, then, and so often as the same shall happen, the borrower, or his executors, administrators, or assigns, shall and will, within the

(*p*) As to repairs by receiver not authorized by mortgagee, see *White v. Metcalf*, [1903] 2 Ch. 567.

(*q*) Or, "And also such a salary at such rate not exceeding the rate of —— per cent. of the amount actually collected and got in by him; as he shall, in the opinion of the lender, his executors, administrators, or assigns, be fairly entitled to for his time and trouble."

space of one calendar month next thereafter, appoint and authorise, or join and concur with the lender, his executors, administrators, or assigns, in appointing, and in default thereof, that it shall be lawful for the lender, his executors, administrators, or assigns, without the concurrence of the borrower, his executors, or administrators, to appoint some other fit and proper person, to be approved of by the lender, his executors, administrators, or assigns, to be receiver, agent and attorney, in the place of the receiver, agent, or attorney, so dying, or becoming unwilling or unable to act as aforesaid, for the purposes aforesaid; AND every such person to be so appointed shall be entitled to exercise all the powers and authorities hereinbefore given to the receiver: AND ALSO, that so long as any moneys shall remain owing on the security of the said indenture of mortgage, the borrower will not revoke or alter any of the powers and authorities hereby given, without the consent in writing of the lender, his executors, administrators, or assigns, first obtained for that purpose, nor do nor suffer any act or thing whereby such powers or authorities may become void or be prejudicially affected; and will not in anywise prevent or obstruct the receiver, or any such future receiver or receivers as aforesaid, in or from receiving or recovering the said rents and profits, or any part thereof.

LIX. AP-
POINTMENT
OF RECEIVER
UNDER
POWER IN
MORTGAGE.

and in de-
fault, that
lender
may appoint;

not to revoke
appointment
without con-
sent of lender.

5. IT IS HEREBY FURTHER DECLARED AND AGREED that the lender, his executors, administrators, or assigns, or any of them, shall not be answerable or accountable for any misapplication or loss of the said rents and profits, or any part thereof which may happen by or through any neglect, default, or breach of trust on the part of the receiver, or any future receiver to be appointed as aforesaid, but that all such misapplications and losses, if any, and also the salary of the receiver for the time being, shall be exclusively made good, borne, and paid respectively by the borrower, his executors, administrators, and assigns: PROVIDED nevertheless, and it is hereby further declared and agreed, that it shall not be lawful for the receiver, or any future receiver to be appointed as aforesaid, to act in the execution of his office

Indemnity to
lender in
respect of
acts or de-
faults of
receiver (r).

Receiver not
to act until
default.

(r) As to the importance of this clause, see *Re Vimbos, Ltd.*, [1900] 1 Ch. 470; *Robinson Printing Co., Ltd. v. Chic, Ltd.*, [1905] 2 Ch. 123; *Deyes v. Wood*, [1911] 1 K. B. 806.

LIX. AP-
POINTMENT
OF RECEIVER
UNDER
POWER IN
MORTGAGE.

of receiver, unless or until the power of sale applicable to the said indenture of mortgage shall have become exerciseable; but no such tenant or tenants, occupier or occupiers as aforesaid, shall be bound to take notice of this present proviso.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

LX. APPOINTMENT of a RECEIVER by a MORTGAGEE
under the STATUTORY POWER (s).

Parties. Recitals: of mortgage; of default giving rise to power; of desire to appoint receiver. Testatum. Appointment of receiver. Proviso as to commission. Direction as to insurance.	THIS INDENTURE (t) [<i>or</i>, THIS AGREEMENT], made the — day of —, 19—, BETWEEN [<i>mortgagee</i>], of, &c., of the one part, and [<i>receiver</i>], of, &c., of the other part; WHEREAS [<i>recite mortgage</i>, ut ante, p. 158]; AND WHEREAS the sum of £—, being the interest on the said principal sum of £— due under the said mortgage on the — day of — last, is now in arrear and unpaid; AND WHEREAS the said [<i>mortgagee</i>] is desirous of appointing the said [<i>receiver</i>] to be receiver of the income of the property comprised in the said mortgage: NOW THIS DEED WITNESSETH [<i>or</i>, THESE PRESENTS WITNESS] that for effecting the said desire the said [<i>mort-</i> <i>gagee</i>], in exercise of the power in that behalf conferred on him by the statute in that behalf, and of all other powers (if any) him hereunto enabling, hereby appoints the said [<i>receiver</i>] to be the receiver of the rents, profits, and income of the hereditaments and property comprised in the said mortgage, the particulars whereof are mentioned in the schedule hereto; AND it is hereby agreed that the said [<i>receiver</i>], as such receiver, shall be entitled to a commission at the rate of — per cent. on the gross amount of all moneys received by him; AND the said [<i>mortgagee</i>] hereby directs the said [<i>receiver</i>] to keep the buildings and all other pro- perty of an insurable nature, being upon, on, or in the said mort-
---	--

(s) See note (l) to Precedent LIX., ante, p. 157.

Stamp.

(t) The appointment of a receiver under the statutory power may be by writing not under seal, but it is usually made by deed. If made by deed it will require a deed stamp of 10s., otherwise a 6d. stamp.

gaged premises insured against loss or damage by fire in the — Insurance Office.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

LX. AP-
POINTMENT
OF RECEIVER
UNDER
STATUTORY
POWER.

LXI. DEED REDUCING *the* RATE of INTEREST on a
MORTGAGE DEBT, to be INDORSED on the MORTGAGE
DEED.

THIS INDENTURE (*u*), made the — day of —, 19—,
BETWEEN the within named [*mortgagee*], of the one part, and the
within named [*mortgagor*], of the other part; WHEREAS the
within named principal sum of £— is now owing on the security
of the within written indenture, but all interest thereon has been
paid up to the — day of — last past; AND WHEREAS it has
been agreed that the rate of interest secured by the within written
indenture shall henceforth be reducible in manner hereinafter
appearing: NOW THIS DEED WITNESSETH, and it is
hereby agreed and declared, that if the said [*mortgagor*], his
executors, administrators, or assigns, shall, on the — day of
— next and thereafter, on every half-yearly day on which
interest is made payable under the within written indenture, or
within — days after each of the said days respectively, pay to
the said [*mortgagee*], his executors, administrators, or assigns,
interest on the said principal sum, or on such part thereof as shall
for the time being remain unpaid, at the rate of — [*reduced*
rate] per cent. per annum, then and in such case the said [*mort-*
gagee], his executors, administrators, and assigns, shall accept
interest for the said principal sum, or for such part thereof as shall
for the time being remain unpaid, at the rate of — [*reduced*
rate] per cent. per annum for every half-year for which such
interest shall be paid to him or them within such — days as
aforesaid, but in all other respects the within written indenture
shall remain unaffected by these presents.

Parties.
Recital of
state of
mortgage
debt.

Testatum.

IN WITNESS, &c.

(*u*) Stamp, 10s.

11 (2)

LXII.
DECLARATION
OF TRUST ON
TRANSFER OF
MORTGAGE.

LXII. DEED of DECLARATION of TRUST *by the TRANS-
FEREE of PART of the MORTGAGE DEBT in favour of the
ORIGINAL MORTGAGEE (x).*

Parties.
Recitals:
of mortgage
and transfer;

of state of
account.

Testatum.

Declaration
of trust.

THIS INDENTURE (y), made the — day of —, 19—, BETWEEN [transferee], of, &c. (hereinafter called “the transferee”), of the one part, and [mortgagee], of, &c. (hereinafter called “the mortgagee”), of the other part: WHEREAS [recite mortgage, ut ante, p. 158]: AND WHEREAS by a transfer of Mortgage dated, &c., and made between [parties] in consideration of the sum of 1,000*l.* therein expressed to be paid by the transferee to the mortgagee, the mortgagee conveyed and transferred to the transferee, the benefit of the said mortgage: AND WHEREAS the sum of 600*l.* only, part of the said sum of 1,000*l.* so expressed to be paid by the transferee as aforesaid was in fact paid by him, and the sum of 400*l.*, residue of the said sum of 1,000*l.*, together with interest on the said sum of 1,000*l.* from the — day of — last, being the last half-yearly day of payment of interest up to the date of the said indenture of transfer, is still the property and money of the mortgagee, and in consideration thereof the transferee has agreed to make and execute the declaration hereinafter contained: NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the premises, and in pursuance of the said agreement, the transferee hereby declares that he the transferee, his executors and administrators, will henceforth stand and be possessed of and interested in the said sum of 1,000*l.* and interest, and the securities for the same, as to the sum of 600*l.*, part thereof, and the interest henceforth to accrue due on the said sum of 600*l.*: In trust for himself the transferee, his executors, administrators, and assigns, and as to the sum of 400*l.*, residue thereof, and the interest on the said sum of 1,000*l.* from the — day of — last up to the date hereof: and also the interest

(x) Where a transfer of part of the mortgage debt is made without the concurrence of the mortgagor and any subsequent incumbrancers, then the original mortgagee and the transferee must both concur in any action for foreclosure, to prevent a multiplicity of actions. A sub-mortgage is therefore preferable to a transfer of part of the debt: see Precedent XXXII., ante, p. 106.

(y) Stamp, 10*s.*

henceforth to accrue due on the said sum of 400*l.*: In trust for the mortgagee, his executors, administrators, and assigns, and upon further trust that until the said sum of 1,000*l.* and interest shall be paid and satisfied the mortgage securities hereinbefore mentioned shall be held by the transferee, his executors and administrators, as well for the purpose of securing the repayment of the said sum of 600*l.* and interest thereon to the transferee, his executors, administrators, and assigns, as of securing the repayment of the said sum of 400*l.* and interest as aforesaid to the mortgagee, his executors, administrators, and assigns.

LXII.
DECLARATION
OF TRUST ON
TRANSFER OF
MORTGAGE.

2. It is hereby expressly agreed by and between the said parties hereto, that the said sum of 600*l.* and interest thereon as aforesaid shall have priority of charge and payment over the said sum of 400*l.* and interest thereon as aforesaid, and that he the transferee, his executors and administrators, shall by and out of any moneys that may come into his hands by virtue of the said mortgage securities (except the interest that has accrued due in respect of the said sum of 1,000*l.* from the — day of — last up to the date hereof, which is to be paid over to the mortgagee, his executors, administrators, or assigns, immediately the same is received) in the first place retain and repay himself or themselves the said sum of 600*l.* and interest in preference to the mortgagee, his executors, administrators, and assigns, as to the said sum of 400*l.* and interest to accrue due thereon as aforesaid.

Transferee's
portion of the
debt and
interest to
have priority
to the
mortgagee's
portion.

3. The right of receiving and giving discharges for the purchase-money of any premises sold under the said mortgage, and also the right of enforcing by foreclosure or other proceedings, the payment of the said sum of 1,000*l.*, or any part thereof, and the interest for the same, and all other rights, remedies, and powers under the said mortgage, or in relation thereto, shall be solely vested in the transferee.

Rights and
remedies
under mort-
gage to be
vested in the
transferee.

4. The mortgagee, his executors, administrators, or assigns, shall have no right to require the said mortgage to be called in, or otherwise to interfere as to the time or manner of realising the securities, or any of them, or getting in or receiving the mortgage money, all which matters shall be in the discretion of the transferee, his executors, administrators, or assigns.

Transferee's
discretion as
to calling in
mortgage, &c.

5. The transferee, his executors, administrators, or assigns, shall not be liable for involuntary losses incurred in relation to the premises.

Transferee
not to be
liable for
involuntary
losses.

IN WITNESS, &c.

LXIII.
MEMORANDUM
OF TRANSFER
OF
EQUITABLE
MORTGAGE.

Assignment.

Undertaking
to execute
formal
transfer.

LXIII. MEMORANDUM of TRANSFER of an EQUITABLE
MORTGAGE by DEPOSIT of DEEDS, by INDORSEMENT on
MEMORANDUM of DEPOSIT (z).

MEMORANDUM (a): I, the within named [*mortgagee*], in consideration of the sum of £—— now paid to me by [*transferee*], of, &c., hereby assign and transfer to him the said [*transferee*], the within mentioned sum of £——, with the interest due thereon as from the —— day of —— last past, and all interest henceforth to accrue due for the same: AND ALSO all the deeds and documents within mentioned or referred to in, and the full benefit of the within written agreement: AND I hereby agree, at the request and cost of the said [*transferee*], his executors, administrators, or assigns, to execute a legal transfer of the said sum of £—— and interest, and of all securities for the same, in such form, and to contain all such powers and provisions as the said [*transferee*], his executors, administrators, or assigns, shall reasonably require.

AS WITNESS, &c.

LXIV. AFFIDAVIT on REGISTRATION of a BILL of
SALE (b).

In the High Court of Justice,
—— Division.

19—, No. .

I [*deponent*], of ——, make oath and say as follows:—

1. The paper writing hereto annexed and marked A. is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof as made and given and executed by [*grantor*].

(z) Notice of the transfer must be given to the debtor. As for the necessity that the transfer of a charge by deposit of deeds should be in writing, see *Re Richardson*, L. R. 30 Ch. D. 396.

(a) Stamp, *ad valorem* on amount secured at the rate of 6*d.* per 100*l.*

(b) See Bills of Sale Act, 1878, s. 10 (2). In the case of an absolute bill of sale, the attesting witness must be a solicitor; and the following clauses would have to be added:—

6. "I am a solicitor of the Supreme Court, and reside at ——."

7. "Before the execution of the said bill of sale by the said [*grantor*], I fully explained to [*him*] the nature and effect thereof."

The affidavit must not be sworn before the solicitor of the grantee: *Baker v. Ambrose*, [1896] 2 Q. B. 372.

Stamp.

2. The said bill of sale was made and given by the said [grantor] on the — day of —, 19—.

3. I was present and saw the said [grantor] duly execute the said bill of sale on the said — day of —, 19—.

4. The said [grantor] resides at [state residence at time of swearing the affidavit], and is [state occupation] (c).

5. The name — subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me, this deponent.

Sworn at —, this — day of —, 19—,

Before me,

This affidavit is filed on behalf of —.

LXV. AGREEMENT or UNDERTAKING by an INTENDING MORTGAGOR to pay COSTS whether the MORTGAGE is completed or not (d).

To Messrs. [intending mortgagee's solicitors].

[Address and date.]

DEAR SIRS (e),

With reference to the proposed loan by your client, Mr. [intending mortgagee], to me of the sum of £—, at interest after the rate of — per cent. per annum, on a mortgage of my freehold estate situate at —, in the county of —, I hereby undertake, on completion of the mortgage, or in case your client shall be advised that the security is unsatisfactory in respect of title, value, or otherwise, then on demand, at any time after the

(c) As to the importance of correctly describing the grantor's occupation, see *Downs v. Salmon*, L. R. 20 Q. B. D. 775; *Kemble v. Addison*, [1900] 1 Q. B. 430; but it seems that the true name of the grantor need not be stated: *Stokes v. Spencer*, [1900] 2 Q. B. 483.

(d) In the absence of special agreement the intending mortgagee has no claim for preliminary expenses: *Wilkinson v. Grant*, 18 O. B. 319; *Ex parte Firth*, L. R. 19 Ch. D. 419, at p. 427. As to what costs should be specially provided for, see *Re Blakesley and Beswick*, 32 Beav. 379. The mortgagee's costs of negotiating the loan and preparing the mortgage, if not deducted from the advance, become a simple contract debt and cannot be added to the security: *Wales v. Carr*, [1902] 1 Ch. 860.

(e) Stamp, 6d.

LXV.
 UNDERTAKING
 TO PAY COSTS.

security shall have been finally declined in writing, to pay you all costs, charges, and expenses incurred or to be incurred in or about the negotiation of the loan, the preparation and execution of this agreement, the investigation of the title and valuation of the property, including surveyors' valuation fees, and the preparation and execution of the mortgage deed, and generally of and incident to the completion of the mortgage; AND further to pay to your client, whether the mortgage shall be completed or not, interest at the rate aforesaid, as from the day when the sum of £—— shall be deposited in the bank of Messrs. —— ready to be advanced, until completion of the mortgage, or until the expiration of —— days after the security shall have been so finally declined as aforesaid; AND in case the mortgage shall not be completed, then to pay to Mr. [*intending mortgagee*] the further sum of £—— by way of compensation for all expenses and losses incurred or to be incurred in raising, depositing, and re-investing the money.

I am, &c.,

[*Signature of intending mortgagor*].

MORTGAGES AS AFFECTED BY THE LAND REGISTRATION ACT, 1925.

PRELIMINARY NOTE.

Registered
 dealings.

Registered dealings by way of mortgage of registered land are regulated (*inter alia*) by sects. 25 to 36, 63, 65, 66, and 106 of the Land Registration Act, 1925. By sect. 25 (2): "A charge may be in any form, provided that (a) the registered land comprised in the charge is described by reference to the register or in any other manner sufficient to enable the registrar to identify the same without reference to any other document; (b) the charge does not refer to any other interest or charge affecting the land which (i) would have priority over the same and is not registered or protected on the register, (ii) is not an overriding interest."

Under sect. 63, on the registration of a charge, a charge certificate is prepared, and is either delivered to the proprietor or deposited in the registry, as the proprietor may prefer.

By sect. 27: "(1) A registered charge shall, unless made or taking effect by demise or sub-demise, and subject to any provisions to the contrary contained in the charge, take effect as a charge by way of legal mortgage.

"(2) Subject to the provisions of the Law of Property Act, 1925, a registered charge may contain in the case of freehold land an express demise, and in the case of leasehold land an express sub-demise of the land to the creditor for a term of years absolute, subject to a proviso for cesser on redemption.

"(3) Any such demise or sub-demise or charge by way of legal mortgage shall take effect from the date of the delivery of the deed containing the same, but subject to the estate or interest of any person (other than the proprietor of the land) whose estate or interest (whenever created) is registered or noted on the register before the date of registration of the charge."

It will be observed that under the Act of 1925 the proprietor of a registered charge will in every case (unless the charge itself otherwise provides) be the holder of a legal estate, *i.e.*, a legal term of years, either expressly granted or implied by the above section (read in conjunction with sect. 87 of the Law of Property Act, 1925, which declares the effect of a charge by deed expressed to be by way of legal mortgage).

In the absence of an entry negating such implication, a covenant for payment of the principal and interest is implied by virtue of the charge: see sect. 28 (1); and also, in the case of leaseholds, a covenant to pay rent and perform covenants and indemnify the proprietor of the charge: sect. 28 (2).

Subject to any entries to the contrary in the register, the registered proprietor of a charge has, under the Act of 1925, all the powers conferred by law on the owner of a legal mortgage: see sect. 34.

Rights of
registered
proprietor.

By sect. 14 (3): "Before the registration of any person, who has not previously acquired the estate intended to be registered, the registrar shall be satisfied that all *ad valorem* stamp duty, if any, which, if the estate had been acquired by him, would have been payable in respect of the instrument vesting that estate in him, has been discharged."

Where the transaction has been already effected by an unregistered instrument, such instrument, and not the registered instrument, shall bear the stamp duty: Land Registration Rule 94; and see further as to stamping, Rule 95.

By sect. 29: "Subject to any entry to the contrary on the register, registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created."

As to protection of charges for securing further advances, see sect. 30.

As to how a charge is to be wholly or partially discharged, see sect. 35.

A new provision as to mortgages is introduced by sect. 106, whereby the proprietor of registered land may mortgage the land, by deed or otherwise, as if it had not been registered. The mortgage may be protected by a caution, and, until so protected on the register, "shall be capable of taking effect only in equity, and of being overridden as a minor interest" (sect. 106 (7)).

Subject to certain provisions as to registration, the mortgage "shall devolve and may be transferred, discharged, surrendered, or otherwise dealt with by the same instruments and in the same manner as if the land had not been registered" (sub-sect. (7)).

In the case of a mortgage by deed, the caution must be in a specially prescribed form, and rules are to be made for giving effect to the provisions of the section generally. (See Rules 223 to 228 of the Land Registration Rules, 1925, and the forms *infra*, pp. 174, 175.)

Where a mortgage off the register—protected by a registered caution—is employed, care must be taken to comply with the proviso to sect. 106 (1), namely, "that the registered land comprised in the mortgage is described (whether by reference to the register or in any other manner) in such a way as is sufficient to enable the registrar to identify the same without reference to any other document."

Although a mortgage off the register, which is protected by a registered caution, is thus permitted, it will no longer be possible to employ a mortgage off the register as an adjunct to a registered charge, for by sect. 39 (1): "Where any transaction relating exclusively to registered land or to a registered charge is capable

of being effected, and is effected by a registered disposition, then, subject to any prescribed exceptions, any deed or instrument, other than the registered disposition, which is executed by the proprietor for the purpose of giving effect to the transaction shall be void, but only so far as the transaction is carried out by the registered disposition."

Provision is, however, made by Rule 96 of the Land Registration Rules, 1925, that where it is necessary or useful (*e.g.*, by reason of lengthy recitals or personal covenants not affecting the substance of the transaction in relation to the registered land, &c.), that the registered disposition should be accompanied by an additional deed or instrument, the registrar may issue a certificate to that effect, and in that case the additional deed or instrument shall be an exception within the meaning of sect. 39, and shall not be rendered void by that section.

PRECEDENTS.

I. REGISTERED CHARGE (*f*). [FORM 45] (*g*).

H.M. LAND REGISTRY.

Land Registration Act, 1925.

District —.

Title No. —.

Property —.

— of —, 19—. In consideration of — pounds (£—)
(the receipt whereof is hereby acknowledged) (*h*), I [*mortgagor*],
of, &c., as beneficial owner (*i*), hereby charge the land comprised in

(*f*) Stamp, if the only instrument of transfer (see Preliminary Note, p. 170), *ad valorem* as on a mortgage.

(*g*) As to a charge on settled land, see sect. 90 of the L. R. A. 1925, and Rule 144 of the Land Registration Rules, 1925. The charge will be in the above form (with the omission of the words "as beneficial owner" where the covenants implied by these words are not intended to be given), and no reference must be made to the settlement.

(*h*) The receipt clause is not in the prescribed form, but its insertion is useful.

(*i*) The words "as beneficial owner" are not in the prescribed form, but should be inserted in order to obtain the benefit of the implied

I. REGISTERED
CHARGE.

the title above referred to with the payment to [*mortgagee*] (*k*), of, &c., on the — day of —, of the principal sum of £—, with interest at — per cent. per annum, payable [*half-yearly*, quarterly], on the — day of —, &c., in every year.

Signed, sealed, and delivered by } [*Signature of mortgagee*.]
the said [*mortgagor*], in the }
presence of [*witness*], of, &c. } (Seal.)

II. REGISTERED CHARGE of FREEHOLD and LEASEHOLD LAND, *with DEMISE of the FREEHOLD, and SUB-DEMISE of the LEASEHOLD LAND, subject to REDEMPTION by REGISTERED PROPRIETOR* (*l*).

H.M. LAND REGISTRY.

Land Registration Act, 1925.

District —.

Title Nos. — and —.

Property —.

Charge.

— of —, 19—. In consideration of — pounds (£—) (the receipt whereof is hereby acknowledged), I [*mortgagor*], of, &c. (hereinafter called “the borrower,” which expression shall

covenants for title under the L. P. A. 1925, s. 76, and Part IV. of the second schedule to that Act. Where the address differs from that on the register, say,

“I [*mortgagor*], of, &c., formerly of, &c.,”

giving registered address.

(*k*) “Where the charge is to two or more jointly no addition need be made to the form.” See notes to Form 45 in the schedule to the rules for various stipulations which may be added.

(*l*) Stamp, *ad valorem* as on a mortgage: see Preliminary Note, *ante*, p. 170. In ordinary cases a registered charge alone, without the subsequent demise and other provisions, will suffice. As a legal term of years is implied by a registered charge (owing to the combined effect of sect. 27 (1) of the L. R. A. 1925, and sect. 87 (1) of the L. P. A. 1925), there appears to be no special advantage in adopting the expedient of a demise (or sub-demise). But if an express demise of the freeholds, or express sub-demise of the leaseholds, should for any reason be preferred, such an addition to the registered charge is permitted by sub-sect. (2) of sect. 27 of the L. R. A., and this form or one of the subsequent precedents may be used, as the case may require.

also include persons deriving title under me, or entitled to redeem this security), as beneficial owner, hereby charge the lands comprised in the titles above referred to with the payment to [mortgagee], of, &c. (*hereinafter* called "the lender"), of the principal sum of £—, with interest at — per cent. per annum, payable [half-yearly or quarterly] on the — day of —, &c., in every year; AND the borrower hereby, as beneficial owner, demises unto the lender ALL the land comprised in the title first above referred to, To HOLD the same unto the lender without impeachment of waste for the term of 3,000 years, to commence from the date hereof, subject to the proviso for redemption hereinafter contained; AND the borrower hereby, as beneficial owner, demises ALL the land comprised in the title secondly above referred to, To HOLD the same unto the lender for the residue of the term created by the registered lease, except the last day of such term, subject to the proviso for redemption hereinafter contained. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lender the sum of £—, and interest thereon at the rate aforesaid, then the lender will, at the request and cost of the borrower, surrender the land hereby demised unto the borrower, or as he shall direct (*m*).

II. OF
FREEHOLD
AND
LEASEHOLD
LAND.

Conveyance
of freehold
land.

Demise of
leasehold
land.

Proviso for
redemption.

AND the borrower hereby covenants with the lender to pay to him, on the — day of — next, the sum of £—, with interest thereon in the meantime at the rate of — per cent. per annum; AND ALSO so long after that day as any principal money shall remain due upon this security to pay to the lender, interest thereon at the same rate by equal [half-yearly or quarterly] payments, on the — day of —, &c., in every year (*n*).

Covenant for
payment of
principal and
interest.

[*Add, if required, covenants to insure and repair, ante, p. 15. Provision for reduction of interest, p. 14. Exclusion of sect. 93 of the Law of Property Act, 1925, p. 12. Restriction of statutory leasing powers, p. 12. Payment of principal by instalments,*

Custody of
land certi-
cate.

(*m*) Sect. 115 of the L. P. A. 1925, does not apply to the discharge of a charge or incumbrance registered under the L. R. A. 1925.

(*n*) Prior to the L. R. A. 1925, it was usual for the mortgagee to obtain possession of the land certificate, but now, by sect. 65, "where a charge or mortgage (otherwise than by deposit) is registered, or is protected by a caution in a specially prescribed form, the land certificate shall be deposited at the registry until the charge or mortgage is cancelled."

II. OF
FREEHOLD
AND
LEASEHOLD
LAND.

p. 23. *Postponement of calling in the mortgage, p. 82. Postponement of payment off, ibid., or other suitable provisions.*]

Signed, sealed, and delivered, &c. } [*Signature of mortgagor.*]
[*as in Precedent I., p. 172.*] } (Seal.)

III. MORTGAGE CAUTION *under sect. 106 of the Land Registration Act, 1925, to PROTECT MORTGAGE by DEED.* (Rule 223) (o).

H.M. LAND REGISTRY.

Land Registration Act, 1925.

District —.

Title No. —.

Property —.

(Date). A.B., of, &c. [*the mortgagee*], requires that no dealing on the part of the proprietor of the land shall be registered until

(o) For sect. 106, see Preliminary Note. The above precedent is Form 64 in the schedule to the Land Registration Rules, 1925. Rule 223 provides as follows:—

- “(1) A caution under sub-sect. (2) of sect. 106 of the Act to protect a mortgage by deed or devolutions or dealings therewith shall be called a mortgage caution, and shall be in Forms 64, 65 or 66, as the case may require.
- “(2) The mortgage caution shall be accompanied by the land certificate, the mortgage, or other document on which it is founded, and a certified copy thereof.
- “(3) The registrar shall, on being satisfied that the mortgage produced is in accordance with the terms of the caution, enter the mortgage caution in the Proprietorship Register, and shall give notice to the proprietor of the land that he has done so. The entry in the register shall be in Form 67.
- “(4) If the person applying for the caution is not the mortgagee named in the mortgage, he shall prove his title to the mortgage in the usual way to the satisfaction of the registrar, and the documents in support thereof, with certified copies for filing, must be produced.
- “(5) In the case of a mortgage caution to protect a devolution or dealing with a mortgage, the registrar shall, on being satisfied

notice has been served on him. This caution is for the protection of a mortgage by deed, dated the — of —, 19—, in favour of the said A.B., to secure £— and interest payable on the — of —, 19—.

III. MORTGAGE
CAUTION.

IV. MORTGAGE CAUTION *under sect. 106 of the Land Registration Act, 1925, to PROTECT a DEVOLUTION of a MORTGAGE by DEED on DEATH.* [FORM 65 (p).]

[*Heading as in Precedent III.*]

C.D., of, &c. [*the mortgagee's personal representative*], requires that no dealing on the part of the proprietor of the land shall be registered until notice has been served on him.

This caution is for the protection of a devolution of the mortgage protected by Caution No. — to the said C.D.

V. MORTGAGE CAUTION *under sect. 106 of the Land Registration Act, 1925, to PROTECT a TRANSFER of a MORTGAGE by DEED.* [FORM 66 (p).]

[*Heading as in Precedent III.*]

E.F., of, &c. [*the transferee*], requires that no dealing on the part of the proprietor of the land shall be registered until notice has been served on him. This caution is for the protection of a transfer of the mortgage protected by Caution No. — to the said E.F.

that the document is in accordance with the terms of the caution, make an entry thereof in the register in Form 68.

“(6) In all cases the registrar shall retain the certified copy of the mortgage or other document in the registry, and shall mark the original with a note of the registration, and shall return it to the applicant.”

Forms 65 and 66, above referred to, constitute the two following precedents. For the forms of entry in the register (Forms 67 and 68), see the schedule to the rules. The mortgage to be protected by a mortgage caution may, of course, be in accordance with any of the precedents already given for mortgages of unregistered land. The convenience of the provision introduced by sect. 106 is obvious.

(p) See note to Precedent III.

VI. TO
SECURE PART
OF
PURCHASE-
MONEY.

VI. MORTGAGE *to SECURE PART of PURCHASE-MONEY by PURCHASER of UNREGISTERED LAND in COMPULSORY DISTRICT, effected by ASSURANCE off the REGISTER, to be followed by REGISTERED CHARGE and a DEED of CONFIRMATION after the PURCHASER has been REGISTERED as PROPRIETOR.*

Parties.	THIS MORTGAGE (q), made the — day of —, 19—, BETWEEN [<i>purchaser</i>], of, &c. (hereinafter called “the borrower,” which expression shall also include persons deriving title under him, or entitled to redeem this security), of the one part, and [<i>vendor</i>], of, &c. (hereinafter called “the lender”), of the other part; WHEREAS, by a conveyance of even date with, but
Recitals :	executed before these presents, and made between the lender, of the one part, and the borrower, of the other part, the freehold hereditaments hereby demised were granted by the lender to the
of conveyance by mortgagee to mortgagor;	borrower in fee simple; AND WHEREAS the lender has agreed to lend to the borrower the sum of £—, upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing; AND WHEREAS the said hereditaments are situate within the district of —, in the county
of agreement for loans ;	of London; AND WHEREAS upon the application of the borrower, made with the consent of the lender, the Registrar of H.M. Land Registry has settled the form of entry of the borrower as proprietor of the said hereditaments, under the heading District —, Title No. —, Property —, under which title it is intended that the borrower shall be forthwith registered as proprietor thereof,
of intended first registra- tion ;	with a — title (r), under the Land Registration Act, 1925; AND WHEREAS an instrument of charge, ready for registration under the said Acts, and intended to be of even date with but to be executed after these presents, has been prepared whereby the borrower is to charge the said hereditaments with the payment to the lender of the said sum of £— and interest in accordance with the covenant in that behalf hereinafter contained; AND WHEREAS it is intended that the lender shall forthwith be registered as the
of intended charge under L. R. A., 1925.	

(q) Stamp, *ad valorem* as on a mortgage.

(r) State whether “absolute,” or “possessory,” or “qualified.”

proprietor of the said charge. NOW THIS DEED WITNESSETH as follows:—

VI.
TO SECURE
PART OF
PURCHASE-
MONEY.

1. In consideration of the sum of £—— now paid by the lender to the borrower (the receipt whereof is hereby acknowledged), the borrower hereby covenants with the lender to pay to him *[continue as in covenant for payment in Precedent II., ante, p. 173]*. Covenant for payment of principal and interest.

2. For the consideration aforesaid, the borrower, as beneficial owner, hereby demises unto the lender ALL THAT piece or parcel of land, &c. *[describe parcels]*, To HOLD unto the lender, without impeachment of waste for the term of 3,000 years, to commence from the date hereof, subject to the proviso for redemption following:— Demise of freeholds.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lender the sum of £—— and interest thereon at the rate aforesaid, then the lender shall forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises unto the borrower, or as he shall direct.

4. For the consideration aforesaid, the borrower hereby irrevocably appoints the lender and *[attorney]*, of, &c., and *[attorney]*, of, &c., jointly, and every two and each of them severally, the attorney and attorneys of the borrower in his name, and on his behalf, to make all applications, and do all acts and things necessary or expedient for the purpose of registering the borrower as such proprietor as aforesaid, and of the lender as proprietor of the charge so intended to be created as aforesaid; AND it is hereby agreed and declared (1) that all costs, charges, and expenses incurred by the lender and the said *[attorney]* and *[attorney]*, or any of them, in exercise of the foregoing powers, shall be deemed to be costs properly incurred by him or them; and (2) that the lender may at all times inspect the entries on the register of the title above referred to. Power of attorney.

[Add any further mortgage provisions or stipulations which may be required.]

IN WITNESS, &c.

VII. OF
REGISTERED
LAND.

VII. MORTGAGE of REGISTERED LAND to SECURE PART
of PURCHASE-MONEY—*effected off the REGISTER—sup-*
ported by a CAUTION under sect. 106 of the Land Regis-
tration Act, 1925.

THIS MORTGAGE (*s*), made the — day of —, 19—,
BETWEEN [*purchaser*], of, &c. (hereinafter called “the bor-
rower,” which expression shall also include persons deriving
title under him, or entitled to redeem this security), of the
one part, and [*vendor*], of, &c. (hereinafter called “the lender”),
of the other part: WHEREAS the lender is registered as prop-
rietor with a [*possessory*] title under the Land Registration
Act, 1925, of the hereditaments hereby assured under the
heading District —, Title No. —, Property —; AND
WHEREAS by an instrument of transfer, ready for registration
under the said Acts, of even date with but executed before these
presents, in consideration of £— the lender has transferred the
said hereditaments to the borrower in fee simple; AND WHEREAS
the lender has agreed to lend to the borrower the sum of £—
upon having the repayment thereof with interest at the rate of
— per cent. per annum secured in manner hereinafter appear-
ing; AND WHEREAS it is intended that this mortgage shall be
protected by a mortgage caution under sect. 106 of the Land
Registration Act, 1925 (*t*); AND WHEREAS it is intended that
the borrower shall forthwith be registered as proprietor of the
said hereditaments, and that application for the entry of such
mortgage caution as aforesaid shall forthwith be made for the
protection of this mortgage.

NOW THIS DEED WITNESSETH as follows:—

Covenant for
payment.

1. In pursuance of the said agreement, and in consideration of
the sum of £— now paid by the lender to the borrower (the
receipt whereof is hereby acknowledged), the borrower hereby
covenants, &c. [*continue covenant for payment of principal and
interest, as in Precedent II., ante, p. 173*].

Demise.

2. In further pursuance of the said agreement, and for the con-
sideration aforesaid, the borrower, as beneficial owner, hereby

(*s*) Stamp, *ad valorem*, as a mortgage, on the amount of the loan.

(*t*) See Precedent III., *supra*, p. 174.

demises unto the lender, ALL the hereditament comprised in the title No. — above referred to, To HOLD the same unto the lender without impeachment of waste for the term of 3,000 years, to commence from the date hereof, subject to the proviso for redemption following.

VII. OF
REGISTERED
LAND.

3. PROVIDED ALWAYS, that if the borrower shall, on the — day of — next, pay to the lender the sum of £—, and interest thereon at the rate aforesaid, then the lender will forthwith execute a receipt for the same in accordance with the provisions of sect. 115 of the Law of Property Act, 1925, or in lieu of such receipt, if the borrower shall so require, execute at the cost of the borrower a re-assignment, surrender, release, or transfer of the premises unto the borrower, or as he shall direct, and sign and deliver to him an instrument of discharge of any charge (*u*) that may have been registered in respect of this mortgage (*x*), or an application to withdraw the said mortgage caution, as the case may require.

Proviso for
redemption.

4. AND the borrower hereby irrevocably appoints the lender and [*attorney*], of, &c., and [*attorney*], of, &c., jointly, and every two and each of them severally, the attorney and attorneys of the borrower in his name and on his behalf to make all applications and do all acts and things necessary or expedient for the purpose of registering the borrower as proprietor of the said hereditaments, and for entering on the register such mortgage caution as aforesaid.

Power of
attorney.

5. IT IS HEREBY AGREED that all costs, charges, and expenses incurred by the lender and the said [*attorney*] and [*attorney*], or

Costs and
expenses.

(*u*) Rule 151 provides that: "A discharge wholly or in part of a registered charge shall be made by an instrument in Form 53, and shall be signed by the proprietor of the charge, but the registrar shall be at liberty to accept and act upon any other proof of satisfaction of a charge which he may deem sufficient."

(*x*) By sub-sect. (5) of sect. 106 of the L. R. A. 1925: "Where a mortgage by deed has been protected by a caution in the specially prescribed form, the mortgagee, or the persons deriving title under him, may, subject to furnishing sufficient evidence of title, and notwithstanding that any interest or charge affecting the land not registered or protected on the register which has priority to the mortgage is disclosed, require the mortgage to be registered as a charge with the same priority as the caution."

VII. OF
REGISTERED
LAND.

Covenant by
borrower to
register as
proprietor,
&c.

any of them, in exercise of the foregoing power shall be deemed to be costs properly incurred.

6. The borrower hereby covenants and agrees with the lender that he the borrower will forthwith procure himself to be registered under the Land Registration Act, 1925, as proprietor of the said hereditaments, and will forthwith procure the protection of this mortgage by a mortgage caution in accordance with the provisions of the said Act (*y*).

IN WITNESS, &c.

VIII. CHARGE to SECURE PART of the PURCHASE-MONEY
of REGISTERED LAND (*z*).

H.M. LAND REGISTRY.

Land Registration Act, 1925.

District —.

Title No. —.

Property —.

(*Date.*) To secure — part of the purchase-money of the land comprised in the title above referred to, I [*mortgagor*], of, &c., hereby charge all (*a*) the said land with the payment to [*mortgagee*], of, &c., on the — of —, 19—, of the principal sum of — pounds (£—), with interest at — per cent. per annum, payable [*half-yearly or quarterly*] on the — of —, &c., in every year.

Signed, sealed, and delivered } [*Signature of mortgagor.*]
by the said [*mortgagor*] in }
the presence of } (*Seal.*)

[*Witness.*]

of [*Address*].

[*Description.*]

(*y*) By Rule 224 (2): "The mortgage caution shall be accompanied by the land certificate, the mortgage, or other document on which it is founded, and a certified copy thereof."

(*z*) See note to Form 46 in the schedule to the Land Registration Rules, 1925.

(*a*) If only part of the land comprised in the title is charged, say,
"The land shown and edged with red in the accompanying plan signed by me, being part of the land comprised in the title above referred to."

IX. CHARGE *by* WAY of ANNUITY. [*Form 46 in schedule to Land Registration Rules, 1925.*]IX. CHARGE
BY WAY OF
ANNUITY.[*Heading as in Precedent VIII.*]

(Date.) I, A.B., of, &c., hereby—

1. Grant to C.D., of, &c., in perpetuity [*or for — years from the date of this charge*], AN annuity or yearly rentcharge of — pounds (£—), to accrue from day to day, but to be paid, free from all deductions except income tax, by equal half-yearly payments [*quarterly payments*] on the — day of —, &c., in every year, the first payment to be made on the — day of —, 19—, and to be issuing out of the land hereinafter charged, TOGETHER with the powers and remedies for securing and compelling payment of the said annuity conferred by sect. 121 of the Law of Property Act, 1925.

2. Charge the land comprised in the title above referred to with the payment of the said annuity.

3. Covenant with the said C.D. “to pay the said annuity at the times and in manner aforesaid.”

4. [Add further covenants by A.B. as to building on and user of the land, with a power for C.D. to enter on breach, if required.]

[*To be executed as in Precedent VIII.*]

X. TRANSFER of CHARGE. [FORM 54.]

[*Heading as in Precedent VIII.*]

(Date.) In consideration of —, I [*mortgagee*], of, &c., hereby transfer to [*transferee*], of, &c., the charge dated the — of — and registered the — of —, of which I am the proprietor.

[*If part only of the money secured is transferred, add: “as to the sum of — pounds (£—)” (b).*]

[*To be executed as in Precedent VIII.*]

(b) The note to Form 54 in the schedule to the rules says: “If part only of the mortgage debt is transferred, the entire charge will be registered jointly in the names of the proprietors, but the register will show in what shares the debt is held.”

XI. TRANSFER
AND
DISCHARGE.

XI. TRANSFER *and* DISCHARGE. [FORM 55.]

[*Heading as in Precedent VIII.*]

(*Date.*) In consideration of — pounds (£—) paid to [*the proprietor of the land*], of, &c., and of — pounds (£—) paid to [*the proprietor of the charge*], of, &c., the said [*proprietor of the land*] hereby transfers to [*transferee*], of, &c., the land comprised in the title above referred to, and the said [*proprietor of the charge*] hereby discharges the same from the charge dated the — of —, registered the — day of —, of which he is the proprietor, and from all liability in respect thereof (*c*).

[*To be executed as in Precedent VIII. by the proprietor of the land, and by the proprietor of the charge.*]

XII. DISCHARGE of REGISTERED CHARGE.

[*Heading as in Precedent VIII.*]

(*Date.*) I [*proprietor of charge*], of, &c., hereby admit that the charge dated the — of —, and registered the — of —, of which I am the proprietor, has been discharged (*d*).

[*To be signed by the proprietor of the charge and attested.*]

(*c*) The note to Form 55 in the schedule shows how this form may be adapted to meet the case where two or more charges are to be discharged, *i.e.*, by the addition, after the name, &c. of the proprietor of the first charge, of the words—

“and — pounds (£—) paid to [*proprietor of second charge*], of, &c.”

The form then proceeds, after the words “title above referred to,” as follows:—

“and the said [*proprietor of the first charge*] and [*proprietor of the second charge*] hereby respectively discharge the same from the charges dated the — of —, and the — of —, registered the — of — and the — of —, of which they are the respective proprietors, and from all liability in respect thereof.”

(*d*) If part only of the land is discharged, add at the end:

“as to the land shown and edged with red on the accompanying plan, signed by me, being part of the land comprised in the title above referred to.”

If part only of the money is discharged, add at the end:

“to the extent of,” &c.

XIII. MEMORANDUM *under HAND to ACCOMPANY a*
 DEPOSIT *of a LAND CERTIFICATE or CERTIFICATE of*
 CHARGE *(e).*

XIII. MEMO-
 RANDUM
 UNDER HAND
 TO ACCOMPANY
 A DEPOSIT.

To [*lender*], of, &c.

I [*borrower*], of, &c., hereby declare that I have deposited with you the land certificate of [certificate of charge for £—— and interest on] the land registered under the heading District ——, Title No. ——, Property ——, to secure the repayment to you, on demand, of the sum of £——, now lent by you to me (the receipt whereof I acknowledge), together with interest thereon at the rate of —— per cent. per annum from the date hereof.

Dated this —— day of ——.

(Signed) ——.

(e) Stamp, *ad valorem* on the lower scale as on an equitable charge under hand. As to the creation of liens by deposit of certificates, see L. R. A. s. 66. As to giving notice to the registrar of the deposit of a land certificate or charge certificate as security for money, see Rule 239 of the Land Registration Rules, 1925, which provides as follows:—

- “(1) Any person with whom a land certificate or charge certificate is deposited as security for money may, by registered letter or otherwise, in writing give notice to the registrar of such deposit, and of his name and address.
 - “(2) The notice shall describe (by reference to the district and parish or place, and number of the title) the land to which the certificate relates.
 - “(3) On receipt of such notice the registrar shall enter notice of the deposit in the Charges Register, and shall give a written acknowledgment of its receipt.
 - “(4) Such notice shall operate as a caution under sect. 54 of the Act.
 - “(5) The provisions of sect. 66 of the Act, and of these rules, as respects the deposit of a charge certificate, shall apply to the deposit of a certificate of sub-charge or of an incumbrance in like manner.”
-

XIV. MEMO-
RANDUM
UNDER HAND
TO PRECEDE
AN INTENDED
DEPOSIT.

XIV. MEMORANDUM *under HAND to PRECEDE an IN-
TENDED DEPOSIT of a LAND CERTIFICATE or CERTIFICATE
of CHARGE (f).*

To [*lender*], of, &c.

I [*borrower*], of, &c., hereby declare that I have this day applied to be registered as proprietor of [a charge for £—— and interest on] the land registered under the heading District ——, Title No. ——, Property ——, and I hereby undertake forthwith, after I shall be so registered, to deposit the land certificate [certificate of charge] with you to secure the repayment to you, on demand, of the sum of £—— now lent by you to me (the receipt whereof I acknowledge), with interest thereon at the rate of —— per cent. per annum from the date hereof.

Dated the —— day of ——.

(Signed) ——.

(f) Notice of the deposit should be given to the registrar: see Rules 240 and 241 of the Land Registration Rules, 1925. As to the effect of the deposit, see Rule 242, and see also Rules 243—245. As to withdrawal of notice, see Rule 246.

CONVEYANCES IN MORTMAIN.



PRELIMINARY NOTE.

CONVEYANCES in mortmain are now governed by the provisions of the Mortmain Acts, 1888 to 1892, and sect. 29 of the Settled Land Act, 1925.

Under the Act of 1888 (51 & 52 Vict. c. 42), land assured to a corporation without a licence in mortmain or the authority of a statute shall be forfeited to the Crown: see Part I., sect. 1 (1).

Part II., sect. 4 (1) of the same Act provides that assurances to charitable uses (with the exceptions contained in the Act) shall be void unless made in accordance with the following requirements of the Act, viz.:—

1. The assurance must take effect in possession: sub-sect. (2).

2. Must contain no reservation for the benefit of the grantor (sub-sect. (3)) other than (i) a peppercorn or nominal rent; (ii) reservation of minerals, or (iii) of easements, or (iv) covenants as to the use or enjoyment of the land; (v) right to enter on non-payment of rent or breach of covenants, or (vi) stipulations of a like nature: sub-sect. (4).

3. In an assurance on sale for full and valuable consideration such consideration may consist of a rent or other annual payment: sub-sect. (5).

4. The assurance, if of land or personal estate other than stock in the Public Funds, unless made for full and valuable consideration, must be made at least twelve months before the death of the grantor: sub-sect. (7) (g).

(g) Record in the books of the Charity Commissioners is now substituted for the requirements respecting attestation and enrolment prescribed by sub-sects. (6) and (9) of this section: see sub-sect. (4) of sect. 29 of the S. L. A. 1925, *infra*.

5. In the case of stock in the Funds it must be transferred six months before the grantor's death: sub-sèct. (8).

Part III., sect. 6 of the Act exempts from the operation of Parts I. and II. an assurance of land for a public park, a school house for an elementary school (as defined), or a public museum. And (sect. 7) from Part II. an assurance of land or of personal estate to be laid out in the purchase of land to or in trust for certain universities and colleges; and an assurance otherwise than by will to trustees for any society for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, "for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration."

Sect. 8 enacts as follows:—"Where by any statute in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner."

The Act of 1892 applies sect. 6 of the Act of 1888 so as to exempt from Parts I. and II. assurances by deed of land of any quantity to any local authority for any purpose for which such local authority is empowered by any Act of Parliament to acquire land.

Sect. 29 of the Settled Land Act, 1925, enacts as follows:—

"(1) For the purposes of this section, all land vested or to be vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes shall be deemed to be settled land, and the trustees shall, without constituting them statutory owners (*h*), have, in reference to the land, all the powers which are by this Act conferred on a tenant for life and on the trustees of a settlement.

(*h*) "Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the Court, or otherwise the trustees have power to convey the settled land in the name of the tenant for life: S. L. A. 1925, s. 117 (1) (xxvi).

“In connexion only with the exercise of those powers, and not so as to impose any obligation in respect of or to affect—

“(a) the mode of creation or the administration of such trusts;
or

“(b) the appointment or number of trustees of such trusts;

“the statute or other instrument creating the trust or under which it is administered shall be deemed the settlement, and the trustees shall be deemed the trustees of the settlement, and, save where the trust is created by a will coming into operation after the commencement of this Act, a separate instrument shall not be necessary for giving effect to the settlement.

“Any conveyance of land held on charitable, ecclesiastical, or public trusts shall state that the land is held on such trusts, and, where a purchaser has notice that the land is held on charitable, ecclesiastical, or public trusts, he shall be bound to see that any consents or orders requisite for authorising the transaction have been obtained.

“(2) The said powers shall be exercisable subject to such consents or orders, if any, being obtained as would, if this Act had not been passed, have been requisite if the transaction were being effected under an express power conferred by the instrument creating the trust, and where the land is vested in the official trustee of charity lands or in any other persons having no powers of management, the said powers shall be exercisable by the managing trustees or committee of management, and the official trustee or other persons aforesaid shall not be liable for giving effect to directions given by the managing trustees or committee of management:

“Provided that where—

“(a) a disposition or dealing is to be effected for a nominal price or rent, or for less than the best price or rent that can be reasonably obtained or gratuitously; or

“(b) any interest in land is to be acquired;

“the like consent or order (if any) shall be required in reference to the disposition, dealing or acquisition, as would have been requisite if the intended transaction were a sale.

“(3) Nothing in this section affects the jurisdiction of the Court, Charity Commissioners, Board of Education, or other competent authority, in regard to the administration of charitable, ecclesiastical, or public trusts.

“(4) Every assurance of land or of personal estate, within the meaning of section four of the Mortmain and Charitable Uses Act, 1888, or if the charitable uses are declared by a separate instrument, then that instrument, shall, in place of the requirements respecting attestation and enrolment prescribed by subsections (6) and (9) of that section, be sent to the offices of the Charity Commissioners within six months after the execution thereof or within such extended period as the said Commissioners may, either before or after the expiration of the six months, in any particular case allow, for the purpose of being recorded in the books of the said Commissioners.

“Where the original cannot be produced an attested or office copy may be sent instead of the original.

“This subsection does not apply to registered dispositions of registered land, or to assurances or instruments required by section one hundred and seventeen of the Education Act, 1921, to be sent to the Board of Education, and only applies to instruments executed after the commencement of this Act.

“(5) Where any trustees or the majority of any set of trustees have power to transfer or create any legal estate, that estate shall be transferred or created by them in the names and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested.

“(6) This section applies (save as otherwise provided) whether the trust was created before or after the commencement of this Act, but does not apply to land to which the Universities and College Estates Act, 1925, applies.”

Land may be held in mortmain for charitable purposes under several enabling statutes, *e.g.*:—

(1) Gifts for Churches Act, 1803 (43 Geo. 3, c. 108) (land not exceeding five acres or chattels not exceeding 500*l.* in value (value restriction removed by Mortmain Act, 1891: see *Re Douglas*, [1905] 1 Ch. 279) given by deed enrolled or by will executed three months before death, for providing church or residence for minister, churchyard or glebe). (As to a *feme covert*, see *Re Smith*, 35 Ch. D. 589.)

(2) Places of Worship Sites Acts, 1873 and 1882 (sites not exceeding one acre for church, chapel, meeting-house, &c., or for residence of minister. Form of assurance given in the Act).

(3) Church Building Acts, 1818, 1819, 1822, 1838, 1851.

(4) Ecclesiastical Commissioners Act, 1866.

(5) The New Parishes Acts, 1843, 1844 (form of grant given in the Schedule to latter Act) and 1856, and District Church Tithes Act, 1865, s. 7.

(6) The School Sites Act, 1841 (form of grant given in sect. 10).

(7) Consecration of Churchyards Act, 1867 (form of conveyance given in sect. 5): see *Clegg v. Metcalfe*, [1914] 1 Ch. 808.

(8) The several Acts relating to the Governors of Queen Anne's Bounty, commencing with 2 & 3 Anne, c. 20, ss. 4, 5, and including the Act of 1838 (in which a form of grant is given), and the Parsonages Act, 1865.

(9) The Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112) (limited to one acre. For form of grant, see sect. 13).

(10) Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29, ss. 4—11).

(11) The Recreation Grounds Act, 1859 (22 Vict. c. 27) (in which a form of grant is given).

For a full list of such statutes, see Bouchier-Chilcott, p. 81.

Companies registered under the Companies (Consolidation) Act, 1908, "for the purpose of promoting art, science, religion, charity, or any other like object" not involving the acquisition of gain, can hold land (sect. 16), but not more than two acres, without a licence from the Board of Trade: sect. 19.

Land may be acquired and held by local and public authorities under their respective enabling statutes, a list of which will be found in Key and Elphinstone, 11th ed., vol. 2, p. 287.

For a form of settlement of proceeds of sale of freeholds and stocks and money by way of renewable trust for religious or charitable purposes, by means of which the settled property remains private property—the object being to avoid the creation of a trust of a charitable or public nature, and to exclude the application of the Charitable Trusts Acts and Mortmain Acts, and the Settled Land Act, 1925—see Key and Elphinstone's Precedents, 11th ed., vol. 2, p. 299.

PRECEDENTS.

I. GRANT
OF LAND FOR
COTTAGE
HOSPITAL.

I. CONVEYANCE *in* MORTMAIN of a BUILDING *and* LAND
to TRUSTEES to be used as a COTTAGE HOSPITAL (a).

	THIS DEED OF CONVEYANCE (b), made the — day of
Parties.	—, 19—, BETWEEN [<i>grantor</i>], of, &c., of the one part and [<i>trustee</i>], of, &c., [<i>trustee</i>], of, &c. [<i>other trustees as required</i>], of
Recital of desire to convey upon charitable trusts.	the other part: WHEREAS the said [<i>grantor</i>], being the estate owner in respect of the fee simple of the hereditaments hereinafter described in possession free from incumbrances, is desirous of settling and assuring the same upon the charitable trusts and in the manner hereinafter appearing: NOW THIS DEED WITNESSETH, that in order to effectuate his said desire the said
Testatum.	[<i>grantor</i>] hereby grants and conveys unto the said [<i>trustees</i>] ALL THAT [<i>parcels</i>], To HOLD the same unto the said [<i>trustees</i>] in fee simple, UPON the trusts and to and for the intents and purposes and with and subject to the powers and directions hereinafter declared of and concerning the same (that is to say):—
Conveyance.	
Trusts and powers.	
As to use of premises as a cottage hospital.	1. The trustees of these presents for the time being (hereinafter called the trustees) shall hold the premises upon trust to permit the same to be used as a hospital, infirmary, or dispensary, or for some similar purpose, for the benefit of such poor and sick persons as the trustees, or any such committee or persons acting by delegation under the trustees as hereinafter mentioned, shall think fit.
As to making rules and regulations.	2. The trustees shall at all times have power to make rules and regulations for the control, management and use of the said

(a) As to the requirements of sect. 29 of the S. L. A. 1925, as to record in the books of the Charity Commissioners, see Preliminary Note, *ante*, p. 190.

Stamps. (b) A conveyance or transfer operating as a voluntary disposition *inter vivos* for charitable purposes will bear the same *ad valorem* stamp as a conveyance on sale, except in the very special case of a conveyance of land for an open space to a non-profit-sharing body incorporated by a special Act: Finance (1909-10) Act, 1910, s. 74. See *ante*, Conveyances, Vol. I., Preliminary Note. The stamp duty must in every case be adjudicated: sub-sect. (2).

hospital, infirmary, or dispensary, and from time to time to revoke, amend, or alter the said rules and regulations, as they shall in their own discretion think fit.

I. GRANT
OF LAND FOR
COTTAGE
HOSPITAL.

3. The trustees may from time to time delegate during such time or times as they shall think fit, the control, management and use of the premises to any committee or persons to be appointed for that purpose, in such manner as the trustees shall approve, but so as that every such delegation as aforesaid shall, at all times after it shall have been made, be revocable by the trustees.

As to
delegating
management
of hospital to
committee.

4. The trustees may charge such (if any) sum or sums of money as they shall think fit for participation in the benefit of the trusts hereby created, or may admit any person or persons thereto without any payment whatsoever.

As to
admitting
persons to
benefit of
hospital with
or without
payment.

5. No person shall be ineligible or considered as a less deserving object of the charity created by these presents or to be created under any power herein contained by reason or on account of his or her religious opinions.

As to
eligibility of
candidates for
admission.

6. It shall be lawful for the trustees at any time or times hereafter to sell or exchange for other hereditaments in England all or any of the said lands, or any lands, tenements, or hereditaments so taken in exchange by the trustees or acquired by them under the power of investment hereinafter contained; and upon any such exchange to give or receive any money for equality of exchange; and to convey the hereditaments so sold or parted with in exchange as aforesaid freed from all trusts whatsoever.

As to sale and
exchange of
lands
conveyed.

7. All (if any) money which shall be received by the trustees on any such sale or sales, exchange or exchanges, as aforesaid, may be invested in the names or under the joint legal control of the trustees either in the purchase of other lands, tenements, or hereditaments in England or in or upon any stocks, funds, or securities, in or upon which trustees may at the time of such investment be entitled to invest trust money, and any such investments may at the discretion of the trustees be varied or transposed into or for others of a nature hereby authorised, including such purchase as aforesaid.

As to
investment of
proceeds
of sale.

8. All hereditaments which shall be so acquired by exchange or purchase as aforesaid shall, until the trust first hereinbefore declared shall be revoked or altered in exercise of the powers

Purchased
lands to
be subject to
trust.

I. GRANT
OF LAND FOR
COTTAGE
HOSPITAL.

in that behalf hereinafter contained, or until such hereditaments shall be sold or exchanged as aforesaid, be held upon the trust first hereinbefore declared of the premises.

Power for
trustees
to revoke or
alter trusts.

9. It shall at all times hereafter be lawful for the trustees by any deed or deeds to revoke or alter all or any of the trusts, powers, and directions, including those as to meetings and the proceedings thereat, which by virtue of these presents or by virtue of these presents and of the exercise of any power herein contained shall for the time being be applicable to all or any of the hereditaments hereby assured, or to all or any other hereditaments, money, stocks, funds, or securities which may have been acquired under any of the powers herein contained or to the affairs of the charity, and to declare new trusts of such hereditaments, money, stocks, funds, or securities for such charitable or benevolent object or purpose as the trustees shall in their discretion think fit, but so that this clause shall not, nor shall anything in these presents contained, authorise the revocation of the declaration hereinbefore contained that no person shall be ineligible or considered as a less deserving object of this charity created by these presents, or to be created under any power herein contained, by reason or on account of his or her religious opinions.

Annual
general
meeting of
trustees.

10. One ordinary meeting of the trustees shall be held in every year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

Special
general
meetings.

11. Any two of the trustees may call a special meeting by delivering at the several dwelling-houses of the other trustees or sending to them respectively through the post — days previous notice of such meeting stating the time and place of holding the same, and the object or purposes for which it is to be held. A notice sent through the post and addressed to a trustee at his dwelling-house shall be effective, although such trustee may at the time be absent from home and may never actually receive such notice.

Place of
meeting.

12. All meetings of the trustees shall be held either in the building so erected on the premises as aforesaid or at such other convenient place within the — parish as shall have been agreed on by the trustees, as a place at which the meetings may be convened.

13. Three trustees at a meeting shall form a quorum.

I. GRANT
OF LAND FOR
COTTAGE
HOSPITAL.

14. Every decision of the trustees as to the exercise of any power hereby given to them shall be made by a resolution at an ordinary meeting or special meeting, carried either unanimously or by a majority of the votes of the trustees present at that meeting, and in case of an equality of votes the chairman of the meeting shall have a casting vote.

Quorum.
Voting at
meetings.

15. Trustees dissenting from any lawful decision of the trustees, which shall have been so made as aforesaid, shall nevertheless concur in all such deeds and other acts as shall be requisite in order to give effect to such decision as last aforesaid.

Decision
to bind
dissenting
trustees.

16. Minutes of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting or of the following meeting when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

Minutes of
proceedings.

17. The trustees may from time to time make such rules and bye-laws for and in relation to the conduct of the business of the charity as they may think fit.

Rules and
bye-laws.

18. The power of appointing a new trustee or new trustees of these presents shall be exercised by the majority of the trustees, and a trustee may at any time by writing under his hand resign his office.

Appointment
of new
trustees, &c.

19. So often as any trustee of these presents shall die or remain out of the United Kingdom for more than twelve calendar months, or be discharged from the trusts of these presents, or become unfit to act, or incapable of acting in the said trusts, or shall resign his office, then, and in every such case, and within *six* calendar months thereafter, the power of appointing a new trustee shall be exercised and the trust filled up.

Vacancies to
be filled
up within *six*
months.

IN WITNESS, &c.

II. CONVEY-
ANCE IN
MORTMAIN OF
ALMSHOUSES,
&c.

II. CONVEYANCE *in* MORTMAIN *of* ALMSHOUSES *and*
LAND *for* CHARITABLE PURPOSES, *and* DECLARATION *of*
TRUST *of* STOCK *for* KEEPING *the* ALMSHOUSES *in*
REPAIR, &c. (c).

Parties.	THIS DEED OF CONVEYANCE (d), made the — day of —, 19—, BETWEEN [<i>grantor</i>], of, &c. (hereinafter called “the grantor”), of the first part; [<i>wife</i>], the wife of the said [<i>grantor</i>], of the second part; and [<i>trustee</i>], of, &c., [<i>trustee</i>], of, &c., and
Recitals: of seisin of grantor;	[<i>trustee</i>], of, &c., of the third part: WHEREAS the grantor is the estate owner in respect of the messuages or cottages and other hereditaments hereinafter described and intended to be hereby granted in possession, free from incumbrances:
of erection of almshouses;	AND WHEREAS the said messuages or cottages have been lately erected by the said [<i>wife</i>], and are intended by her to be used and occupied as almshouses for poor widows and spinsters, inhabitants of the borough or parish of — aforesaid, which said messuages or cottages are now in the several occupations of [<i>present occupiers</i>], who have been placed therein by the said [<i>wife</i>] as the occupants thereof during their respective lifetimes, subject to removal for misconduct only, and the grantor is desirous of conveying the same hereditaments and premises for the purposes and upon the trusts, and in manner hereinafter declared and contained concerning the same: AND WHEREAS, for the purpose of forming a fund for the payment of the poor-rates and other rates and taxes chargeable upon the said hereditaments and premises, and of the premiums on insurance against fire, and for keeping the said messuages and cottages in tenantable repair and condition, the said [<i>wife</i>] has invested the sum of £—— in the purchase, in the names of the said [<i>trustees</i>], of the sum of £—— 2½ per Cent. Consolidated Stock, to be held by them upon the trusts herein-
of desire to convey;	
of endow- ment.	

(c) As to the requirements of sect. 29 of the S. L. A. 1925, see Preliminary Note, *ante*, p. 190.

Stamp.

(d) Stamp, *ad valorem* at the rate of 1*l.* per 100*l.* on the value of the land and houses, and at the rate of 5*s.* per 100*l.* or part of 100*l.* on the value of the stock which is not “conveyed” or “transferred” by the trust deed, and so does not come under sect. 74 of the Finance (1909-10) Act, 1910, but under the schedule to the Stamp Act, 1891, *tit.* Settlement. The stamp must be adjudicated.

after declared concerning the same. NOW THIS DEED WITNESSETH as follows:—

II. CONVEYANCE IN MORTMAIN OF ALMSHOUSES, &c.

Testatum.

Grant of almshouses to trustees.

1. For effectuating the desire of the said [*wife*], and in consideration of the premises, the grantor hereby grants and conveys unto the said [*trustees*], ALL THAT piece or parcel of land situate, &c. [*describe parcels*], and those — messuages or cottages (hereinafter called “the almshouses”), erected as aforesaid, and now being on the same piece or parcel of land, with the outbuildings thereto belonging: To HOLD the said piece or parcel of land, almshouses, and premises, with their appurtenances, unto the said [*trustees*], in fee simple [subject nevertheless to the proviso hereinafter contained] (e), upon the trusts following, that is to say: Upon trust that they the said [*trustees*] and the survivors or survivor of them, or other the trustees or trustee for the time being of these presents (hereinafter called “the trustees”), shall permit the present occupiers to occupy the said almshouses now occupied by them respectively during their respective lifetimes, free from any rent or render in respect of such almshouses; AND when and so often as any present or future occupier of the said almshouses shall die or cease to occupy the said almshouses, or any of them, shall from time to time permit such poor widow or spinster being [who shall have been for not less than — years previously (f)] an inhabitant of the parish of — aforesaid, as the trustees, but during the lives of the grantor and the said [*wife*], and the life of the survivor, with their or his or her concurrence, shall nominate, to occupy the almshouse, or each of the almshouses, so becoming vacant, free from rent or render as aforesaid for her lifetime: PROVIDED ALWAYS, that the present or succeeding occupiers of the said almshouses shall be removable by or at the instance of the parties or party in whom the right of nomination thereto is hereby vested, for disgraceful or disorderly conduct.

Upon trust to permit present occupants to occupy almshouses;

to fill up vacancies;

to remove occupants for misconduct.

2. IT IS HEREBY AGREED AND DECLARED that the trustees shall stand possessed of and interested in the said sum of £—— 2½ per Cent. Consolidated Stock, upon trust that they the trustees shall,

Declaration of trusts of stock.

(e) If clause 3 is omitted, the words in brackets must be struck out.

(f) See *Etherington v. Wilson*, L. R. 1 Ch. D. 160.

II. CONVEY-
ANCE IN
MORTMAIN OF
ALMSHOUSES,
&c.

by and out of the dividends and annual proceeds of such sum of stock, pay and discharge all taxes, rates, assessments, and outgoings whatsoever (including the premiums on any policy of insurance against loss or damage by fire), which now are, or at any time hereafter shall be taxed, rated, charged, or assessed, or be payable upon or in respect of the said hereditaments and premises, or any part thereof: AND ALSO all sums or outlay which may be required for keeping the said almshouses and premises in tenantable repair and condition: AND shall from time to time retain the surplus of such dividends and annual proceeds, and accumulate the same by investment when at any time amounting to £—, so as to form a reserve fund to meet any extraordinary outlay in the way of repairs or otherwise, which may hereafter be required in respect of the said almshouses and premises.

Proviso that
on deaths of
trustees, land
and stock
shall be
vested in
official
trustees (g).

3. PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that upon the death of any one of them the trustees, it shall be lawful for the survivors of them, and upon the death of any two of them, it shall be obligatory upon the survivors of them, and they are hereby empowered, to apply to the High Court of Justice, Chancery Division, and the Board of Charity Commissioners for England and Wales, or to either of them, for an order that the hereditaments and premises intended to be hereby granted may be vested in the Official Trustee of Charity Lands and his successors, and that the trust funds of these presents may be vested in the Official Trustees of Charitable Funds under or by virtue of the provisions of the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, or either of such Acts, and immediately upon such vesting order being made, the hereditaments and premises hereby granted shall be held by the Official Trustee of Charity Lands and his successors, and the trust funds hereby provided and appropriated shall be held by the Official Trustees of Charitable Funds upon the trusts hereinbefore

(g) As to the powers and duties of official trustees of charity lands and charitable funds, and vesting orders, see stats. 16 & 17 Vict. c. 137, ss. 47—52; 18 & 19 Vict. c. 124, ss. 15—28.

If desired, this clause may be omitted, in which case clause 19 of the last preceding precedent may be inserted, or omitted in reliance on the statutory provisions as to appointment of new trustees.

declared, of and concerning such hereditaments and premises respectively.

IN WITNESS, &c. (*h*).

II. CONVEY-
ANCE IN
MORTMAIN OF
ALMSHOUSES,
&c.

III. DEED of DECLARATION of TRUST of a MISSION-HOUSE.

THIS DEED (*i*), made the — day of —, 19—, BETWEEN the reverend [*vicar*], vicar of the ecclesiastical district of St. Anne in —, in the county of — [or “incumbent of the benefice of the rectory [*vicarage*] of —, in the county of — and [diocese of —], of the one part, and [*trustee*], of, &c., [*other trustees*], and [*trustee*], of, &c., of the other part: WHEREAS, by an indenture dated the — day of —, 19—, and made between the said [*vicar*], of the first part; the Ecclesiastical Commissioners for England, of the second part; the right reverend the Lord Bishop of —, of the third part; and the said [*trustees*], of the fourth part; in consideration of the sum of £— paid by the said [*trustees*] into the Bank of England to the account of the said Ecclesiastical Commissioners, ALL that piece or parcel of land situate in the High Street of — aforesaid, containing by admeasurement — superficial feet or thereabouts, and which with the dimensions and abutments is particularly described and delineated in the plan drawn in the margin thereof, and therein coloured pink, with the appurtenances, subject to the tithe commutation rentcharge, and all other duties and payments ecclesiastical or civil, charged upon or payable out of the same, and to all rights of way and easements affecting the same, was conveyed unto the said [*trustees*], in fee simple: AND WHEREAS the said sum of £— so paid by the said [*trustees*], as the consideration money for the said hereditaments and premises comprised in and granted by the said recited indenture as aforesaid, was in fact so paid by them out of moneys in their names arising from voluntary contributions, and applic-

Parties.
Recitals:
of conveyance
of land for
mission-
house;
that con-
sideration
paid for land
was raised by
subscriptions.

(*h*) This deed must be sent to the offices of the Charity Commissioners within six months after the execution thereof, for the purpose of being recorded in the books of the said Commissioners: S. L. A. 1925, s. 29 (4); see Preliminary Note, *ante*, p. 190.

(*i*) Stamp, 10s. This deed must be recorded in the books of the Charity Commissioners within six months after execution: see *ante*, p. 190. Stamp and record.

III. ENDOW-
MENT OF
MISSION-
HOUSE.

Testatum.

Declaration of
trust.

able for the purposes hereinafter mentioned, and it has accordingly been agreed that such a declaration of trust as is hereinafter contained shall be made and executed: NOW THIS DEED WITNESSETH, that it is hereby agreed and declared as follows:—

1. The said [*trustees*], shall henceforth stand and be seised and possessed of the said hereditaments and premises granted by the said recited indenture, and any erections or buildings for the time being thereon, and the rents and profits thereof (if any), upon the trusts and with and subject to the powers hereinafter declared and contained concerning the same, that is to say, upon trust, as an ecclesiastical charity (*k*) for the general purposes of a mission-house, for the benefit of the vicar for the time being of the said district of St. Anne — (hereinafter called “the vicar”) [*or*, “for the benefit of the incumbent for the time being of the said benefice of — (hereinafter called “the incumbent”),” *substituting* “incumbent” for “vicar” *throughout the precedent*], and for the use of the members of the Church of England in the said district, in manner hereinafter appearing.

Mission-house
to be under
control of
vicar.

2. The said mission-house and premises shall be under the superintendence, authority, and control of the vicar: AND the trustees or trustee for the time being of these presents (hereinafter called “the trustees”) shall at all times permit the said mission-house and premises to be used (a) for the celebration of divine service; (b) as a school for the education of children and adults, or children alone of the poorer classes in the district according to the principles of the Church of England; (c) as a class-room, meeting-room, or lecture-room for the religious or secular instruction of members of the Church of England; (d) for clerical meetings, general meetings, or committee meetings of any societies (parochial or otherwise) connected with the Church of England; (e) as a club-room in connection with the Church of England for the poorer classes in the said district; (f) for any other objects or purposes, spiritual, intellectual, moral, or social, for the benefit of members of the Church of England in the said district as the vicar shall from time to time think fit and determine: AND shall at all times permit the vicar by himself or his agent to have the

(*k*) See, as to the importance of these words, *Re Perry Almshouses*, [1899] 1 Ch. 21.

custody and possession of the keys of the said mission-house and premises, and shall from time to time do all other things which may be necessary or proper for maintaining the superintendence and control of the vicar over the said mission-house and premises.

III. ENDOW-
MENT OF
MISSION-
HOUSE.

3. It shall be lawful for the trustees, with the consent of the vicar, from time to time to build upon, let, sell, pull down, rebuild and alter, or otherwise deal with the said hereditaments and premises, and any erections or buildings for the time being thereon, in such manner in all respects as the trustees shall think fit: But so nevertheless that no sale or other disposition of the said hereditaments and premises, or any part thereof (other than a lease from year to year, or for a term not exceeding two years in possession), shall be made or granted without the consent in writing of the Lord Bishop of — for the time being (hereinafter called “the bishop”).

Power for
trustees to
sell,
mortgage,
lease, &c. the
premises.

4. The trustees shall apply and deal with the moneys arising from any sale, mortgage, or other disposition of the said hereditaments, or any part thereof, after payment thereof of the expenses of such disposition and any duties which may be payable thereon, for the general purposes of the mission-house aforesaid, with the consent of the vicar, in such manner as they the trustees shall think fit.

As to applica-
tion of moneys
received.

5. It shall be lawful for the trustees, at any time or from time to time, with the consent of the bishop and of the vicar, to apply and deal with the same last-mentioned moneys, or any part thereof, or any funds representing the same respectively, for such other public charitable purposes for the benefit of the said district of — aforesaid, and the inhabitants thereof, or some part thereof respectively, and in such manner as the trustees shall think fit and determine, and with power if they or he shall think fit, with the like consent, to settle and approve of any scheme or schemes for such last-mentioned application, and for that purpose to revoke or vary the trusts and powers of these presents as they or he shall think fit and determine: AND in particular the trustees may, with such consent as aforesaid, and with a view to using the premises for the purposes of a consecrated church, revoke such trusts and powers, and convey the said premises, or any part thereof, to any person or persons or corporation duly authorised to hold the same for any of the purposes of the Church Building Acts.

Power to
apply moneys
to other
charitable
purposes.

III. ENDOW-
MENT OF
MISSION-
HOUSE.

Power to
appoint new
trustees.

6. The power of appointing a new trustee or new trustees of these presents shall be exercised by the vicar, but no person shall be appointed trustee who is not a member of the Church of England: AND if any trustee shall, in the opinion of the vicar and the majority of the trustees (such opinion to be expressed in writing and signed by them), cease to be a member of the Church of England, he shall cease to be a trustee hereof, and shall be deemed to be unfit to act as such.

The bishop to
be visitor.

7. The bishop shall be and shall have the powers of visitor in respect of the said mission-house and premises, and the control of the vicar over the same shall be in all respects subject to the directions and orders of the visitor.

The bishop
to appoint a
substitute in
the event of
the absence or
disability of
the vicar.

8. During the absence, disability, or suspension of the vicar, or the avoidance of the benefice, the powers and authorities hereby given to the vicar may be exercised by such person being in holy orders as the bishop shall in writing appoint for that purpose.

IN WITNESS, &c.

NOTICES (a).

PRECEDENTS.

I. LANDLORD *to* TENANT *to* QUIT *on a* PRESCRIBED DAY (b).

I HEREBY [as agent for and on behalf of [*landlord*], of, &c.] give you notice to quit and deliver up on the — day of —,

(a) Notices do not require to be stamped.

(b) In the absence of any express agreement respecting the power of determining the tenancy (other than an agricultural holding) by notice, it may be determined by either party, at the expiration of any year of the tenancy, by giving half a year's notice, which half-year is computed in the customary manner:—Thus, a tenancy commencing at Lady-day may be determined by a notice delivered on or before the preceding Michaelmas-day, without regard to the number of days intervening between the two periods: *Roe d. Durant v. Doe*, 6 Bing. 574. So, where there is a yearly tenancy determinable by agreement by three months' notice, in the absence of an express provision that it is to be determinable "at any

19— (c), the possession of all that messuage or tenement, No. —, in — street, in the city of —, held by you of me as tenant.

[This notice is given for the following reasons, namely].

As WITNESS my hand, this — day of —, 19—.

To Mr. [*tenant*].

[*Signature of Landlord or of Agent as*
"Agent for the said [*Landlord*]."]

I. TO
TENANT TO
QUIT.

II. TENANT *from YEAR to YEAR to LANDLORD, of* QUITTING.

I HEREBY give you notice that I shall quit and deliver up to you, on the — day of —, 19—, the possession of the messuage, farm, and lands, in the parish of —, in the county of —, now held by me of you as tenant from year to year.

As WITNESS my hand, this — day of —, 19—.

To Mr. [*landlord*].

[*Signature of Tenant*.]

time," it can only be determined at the expiration of a year of the tenancy: *Lewis v. Baker*, [1906] 2 K. B. 599; *Dixon v. Bradford, &c. Society*, [1904] 1 K. B. 444. But it may be made determinable by agreement at any time: see *Soames v. Nicholson*, [1902] 1 K. B. 157.

A statutory form of notice to quit applying to premises protected by the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, is given in the First Schedule to the Act of 1920.

In the case of holdings falling within the Agricultural Holdings Act, 1923, ss. 12 (1), 25 (1), a year's notice to quit is necessary and the clause below must be incorporated at (c). The words in brackets are to be used only in the case of agricultural tenancies, and may relieve the landlord from paying compensation: sect. 12 (1); see also sect. 14 as to cottages on a holding.

(c) It sometimes happens that the landlord is unable to ascertain at what period the tenancy commenced, and cannot therefore safely give a notice to quit in specific terms. In such a case substitute for the specified date the following words:—

"at the expiration of the year of your tenancy which shall expire at or next after the end of one half-year ['one year' *in the case of an agricultural lease, see ante, note (b)*] from the time of service hereof": see *Sidebotham v. Holland*, [1895] 1 Q. B. 378.

As to notices to quit, where the time of the commencement of the tenancy is unknown.

III. OF DETER-
MINING A
TWENTY-ONE
YEARS' LEASE.

III. LESSEE to LESSOR, or *vice versâ*, DETERMINING a
TWENTY-ONE YEARS' LEASE at SEVEN or FOURTEEN
YEARS (*d*).

IN pursuance of a power contained in an indenture of lease, dated the — day of —, I, the owner [of the reversion expectant on the determination] of the term thereby created, hereby give you notice that it is my intention to put an end to the term thereby created at the end of the first seven [fourteen] years thereof.

AS WITNESS my hand, this — day of —, 19—.

To Mr. [*lessor*].

[*Signature of Lessee.*]

IV. LESSOR to LESSEE to REPAIR (*e*).

I [*landlord*], of, &c., dated the — day of —, hereby give you notice and require you, within — calendar months from the date hereof [*or, forthwith*], to put in complete and substantial repair the messuage or dwelling-house held by you under an indenture of lease, dated the — day of —, from me, and particularly, that you do execute and make good the repairs and defects [found by my surveyor on an examination of the premises, and which are] mentioned in the schedule hereto.

AS WITNESS my hand, this — day of —, 19—.

To Mr. [*lessee*].

[*Signature of Lessor.*]

THE SCHEDULE ABOVE REFERRED TO.

V. LESSOR to LESSEE to REMEDY and PAY COMPENSATION
for BREACH of COVENANT to REPAIR, *previous to*
RE-ENTRY (*f*).

I [*landlord*], of, &c., hereby give you notice that in the indenture of lease, dated the — day of —, was contained a covenant

(*d*) The notice must be given by or on behalf of the legal owner of the lease: *Stait v. Fenner*, [1912] 2 Ch. 504. As to what notice is sufficient, see *Bury v. Thompson*, [1895] 1 Q. B. 696.

(*e*) This notice will serve (*mutatis mutandis*) where it is the landlord's duty to repair: see *Torrens v. Walker*, [1906] 2 Ch. 166.

(*f*) As to notice to lessees to remedy and compensate for breaches of covenant before re-entry and enforcing forfeiture of leases, see sect. 146

on your part that you would during the term thereby granted [*set out fully covenant to repair as in the lease*]; AND I further give you notice that the said covenant has not been duly performed on your part, and that the particular breaches thereof complained of are the committing or permitting the several acts of waste and dilapidations enumerated in the schedule hereto: AND I hereby require you to remedy all the said breaches of covenant [so far as the same are capable of remedy, and to make to me compensation in money for such breaches as are not capable of remedy] *or* [and to make compensation to me in money for such breaches].

V. LESSOR TO
LESSEE
TO PAY COM-
PENSATION.

In the event of your failure to comply with this notice within — months, it is my intention to re-enter upon the said premises and claim damages for breaches of the said covenant.

AS WITNESS my hand, this — day of —, 19—.

To Mr. [*lessee*].

[*Signature of Lessor.*]

THE SCHEDULE ABOVE REFERRED TO.

VI. TENANT to LANDLORD of DAMAGE caused by GAME (g).

The Agricultural Holdings Act, 1923.

To Mr. [*landlord*].

I HEREBY give you notice that I have sustained damage to [*particulars of crop damaged and place*], such damage being caused by game on — Farm, in respect of which I am entitled to compensation under the Agricultural Holdings Act, 1923, and I hereby authorise you or your agent to enter upon the said farm and premises and inspect the damage.

AS WITNESS (g).

[*Signature of Tenant.*]

of L. P. A. 1925. See *Fletcher v. Nokes*, [1889] 1 Ch. 271; *Re Serle*, [1898] 1 Ch. 652; *Horsley Estate, Ltd. v. Steiger*, [1899] 2 Q. B. 79; and *Piggott v. Middlesex C. C.*, [1909] 1 Ch. 134. Underlessees, who are not within sect. 14 of the 1881 Act, are granted relief by sect. 146 (2) of the Act of 1925: *Rogers v. Rice*, [1892] 2 Ch. 170; *Re Riggs*, [1901] 2 K. B. 16; *North London Land Co. v. Jaques*, 32 W. R. 283. See, generally, as to relief from forfeiture under the Act of 1925, and K. & E. 11th ed. vol. 2, p. 332, note (a).

(g) See Agricultural Holdings Act, 1923, s. 11.

VII. OF
TENANT TO
LANDLORD
CLAIMING
COMPENSA-
TION FOR
DAMAGE
BY GAME.

VII. TENANT to LANDLORD CLAIMING COMPENSATION for
DAMAGE caused by GAME, UNREASONABLE DISTURBANCE,
and for IMPROVEMENTS.

The Agricultural Holdings Act, 1925.

To Mr. [landlord].

I HEREBY give you notice as follows:—

1. I claim from you the sum of £—— as compensation under the Agricultural Holdings Act, 1925, arising from damage done by game, notice and full particulars of which I gave to you by a notice, dated, &c.

2. I intend to claim the compensation to which I am entitled under sect. 12 of the above mentioned Act, on quitting the —— Farm, and I hereby authorise you or your agent to enter upon the said farm and premises for the purpose of making a valuation of my household goods, implements of husbandry, produce, and farm stock on or used in connection with the said farm and premises (h).

AS WITNESS, &c.

[Signature of Tenant.]

VIII. LESSEE to LESSOR, of assigning LEASE (i).

I HEREBY give you notice, that, by an indenture dated the —— day of ——, 19—— [or, already prepared, and intended to be executed forthwith], and made [or, purporting to be made] between me of the one part, and [assignee], of, &c., of the other part, the messuage, being No. —, in —— Place, in the parish of ——, in the country of ——, demised by you to me, has been [or, is intended or expressed to be] assigned by me to the said [assignee], for all the residue of the term granted by you to me.

AS WITNESS my hand, this —— day of ——, 19——.

To Mr. [lessor].

[Signature of Lessee.]

(h) This notice must be given within one month of the notice to quit: sect. 12 (7) of Agricultural Holdings Act, 1925. As to what is “good and sufficient cause” for notice to quit under this section, see *Re Bonnett and Fowler*, [1913] 2 K. B. 537; see also *Hamilton Gill v. White*, [1922] 2 K. B. 422; and *Minister of Agriculture v. Dean*, [1924] 1 K. B. 851.

(i) The words within brackets will be used where the lessee is bound to give the notice previously to the assignment.

IX. MORTGAGEE *to* TENANT *to pay the RENT to him* (k).IX. OF
MORTGAGEE
TO TENANT.

I HEREBY give you notice, that, by an indenture dated the — day of —, 19—, and made between [*mortgagor*], of —, of the one part, and me, the undersigned [*mortgagee*], of the other part, I have become entitled as mortgagee to the receipt of the rents of the messuage and premises known as, &c., and now in your occupation. And I require you to pay to me the rent now due, and hereafter to become due, in respect of the said premises.

AS WITNESS my hand, this — day of —, 19—.

To Mr. [*tenant*].

[*Signature of Mortgagee.*]

X. BY RECEIVER *for* MORTGAGEE *to* TENANT.

I HEREBY give you notice, that, by virtue of an indenture dated the — day of — last, made between [*mortgagor*], of —, of the first part, [*mortgagee*], of —, of the second part, and me, the undersigned [*receiver*], of the third part, I was duly appointed receiver of the rents and profits of, among other property, the messuage and piece of ground situate in the parish of —, in the county of —, in your occupation, and held by you under a lease dated, &c. And I accordingly require you to pay to me the rent now due, and hereafter to become due from you, in respect of the said premises accordingly.

AS WITNESS my hand, this — day of —.

To Mr. [*tenant*].

(Signed) [*Receiver*].

(k) As to the right of an equitable mortgagee to rent, see *Finck v. Tranter*, [1905] 1 K. B. 427; *Vacuum Oil Co. v. Ellis*, [1914] 1 K. B. 693.

**XI. OF
SECOND TO
FIRST
MORTGAGEE.**

XI. SECOND to FIRST MORTGAGEE (l).

I HEREBY give you notice, that, by a deed dated the — day of —, and made between [*mortgagor*], of the one part, and me, the undersigned [*mortgagee*], of the other part, I have advanced to [*mortgagor*] the sum of £— and interest, the repayment whereof with interest is secured on the several messuages, lands, and hereditaments, situate in —, now in mortgage to you.

As WITNESS my hand, this — day of —.

To Mr. [*first mortgagor*].

[*Signature of Second Mortgagee.*]

XII. MORTGAGOR to MORTGAGEE, of Intention to pay off MORTGAGE DEBT (m).

I HEREBY give you notice, that, at the expiration of six calendar months from the date hereof, I shall pay off the principal sum of £— and interest owing from me to you, secured by an indenture of mortgage dated the — day of —, and made between, &c.

As WITNESS my hand, this — day of —.

To Mr. [*mortgagee*].

[*Signature of Mortgagor.*]

(l) This notice will give priority over future advances made by the first mortgagee, unless by the first mortgage deed future advances were obligatory: see L. P. A. 1925, s. 94 (1). See also *Freeman v. Laing*, [1899] 2 Ch. 355.

The protection afforded by L. P. A. 1925, s. 96 (2), to a first mortgagee will be excluded by this notice.

(m) If the mortgagee has taken no steps to enforce payment (*Bovill v. Endle*, [1896] 1 Ch. 648), the mortgagor must give six months' notice to pay off, or tender six months' interest in lieu of notice: *Smith v. Smith*, [1891] 3 Ch. 550; *Johnson v. Evans*, 61 L. T. 18. See also *Edmondson v. Copland*, [1911] 2 Ch. 301; *Fitzgerald's Trustee v. Mellersh*, [1892] 1 Ch. 385; *Santley v. Wilde*, [1899] 1 Ch. 747.

XIII. MORTGAGEE *to* MORTGAGOR *of Intention to* SELL,
unless PRINCIPAL *and* INTEREST MONEYS *be paid at a*
certain TIME (n).

XIII. OF
 MORTGAGEE'S
 INTENTION
 TO SELL.

I HEREBY give you notice that I require you to pay off the principal and interest moneys (*o*) owing to me by virtue of the indenture of mortgage dated the — day of —, and made between, &c., and further, that in default of your so doing within three calendar months from the date hereof (*p*), I shall immediately proceed to a sale of the messuages and hereditaments comprised in or subject to the said indenture, or such part or parts thereof as I may think fit.

AS WITNESS my hand, this — day of —.

To Mr. [*mortgagor*].

[*Signature of Mortgagee.*]

XIV. ASSIGNEE *of* BOND *or* MORTGAGE *to* OBLIGOR *or*
 MORTGAGOR.

I HEREBY give you notice, that by an indenture dated the — day of — last, made between [*obligee or mortgagee*], of —, of the one part, and me, the undersigned, of the other part, the principal sum of £—, the payment whereof is secured by a bond or obligation executed by you to the said [*obligee*], dated the

(*n*) See also, where principal is payable on demand, Precedent XVII., *post*, p. 209.

(*o*) Add “and costs,” if any.

(*p*) This notice is necessary in order to exercise the statutory power of sale under the L. P. A. 1925, s. 103 (1), as to the mode of serving: see sect. 196.

If it is not known who are the persons interested in the equity of redemption, the notice should be left on the premises (see sect. 196), addressed as follows:—

“To The Mortgagee or other the persons interested in the equity of redemption of the property comprised in the above mentioned mortgage.”

XIV. OF
ASSIGNEE TO
OBLIGOR OR
MORTGAGOR.

— day of —, 19— [or, mortgage dated, &c., and made, &c., of certain freehold premises situate, &c.], together with all interest due or to become due thereon, as from the — day of — last [together with the securities for the same], has been assigned by the said [obligee or mortgagee] to me absolutely, and all payments of principal and interest must in future be made to me.

As WITNESS my hand, this — day of —.

To Mr. [obligor].

(Signed) [Assignee.]

XV. ASSIGNEE of POLICY of LIFE ASSURANCE to an
INSURANCE OFFICE pursuant to the Policies of Assurance Act, 1867 (q).

To the — Assurance Society.

WE HEREBY give you notice, that by an indenture dated, &c., and made between [parties], a policy of assurance, effected by the said [mortgagor] on his life in your office, dated the — day of —, and numbered — in your books, for the sum of £— thereby assured, and all moneys to be received or become payable under or by virtue of the said policy, by way of bonus or otherwise, have been assigned by the said [mortgagor] to [mortgagee] absolutely [or, by way of mortgage for securing certain moneys owing by the said [mortgagor] to the said [mortgagee] and interest thereon]. And we request you to acknowledge in writing the receipt of this notice.

Dated the — day of —.

[Signature of Mortgagee's Solicitors],

Solicitors for the said [Mortgagee].

(q) See sect. 3 of this Act. An acknowledgment of the receipt of the notice should be obtained from the office which is entitled to make a charge for such receipt of a sum not exceeding 5s.: see sect. 6.

XVI. ASSIGNEE of a REVERSIONARY INTEREST in MONEY
in the FUNDS to the TRUSTEES in whose NAMES the
Stock is standing.

XVI. OF
ASSIGNEE
OF RE-
VERSIONARY
INTEREST
TO TRUSTEES.

To [trustees], trustees of the will and codicil of —, deceased
[or, of a settlement dated, &c.], and to all others whom it
may concern.

I HEREBY give you notice, that by an indenture dated the
— day of —, and made between [assignor], of, &c., of the one
part, and me, the undersigned [assignee], of the other part, all
the share, right, and interest of the said [assignor] of and in the
trust funds and property comprised in and subject to the trusts
of the said will [or, settlement], were assigned by the said
[assignor] to me absolutely [or, by way of mortgage, for securing
certain moneys advanced by me to the said [assignor], and in-
terest] (r).

As WITNESS my hand, this — day of —, 19—.

[Signature of Assignee.]

XVII. MORTGAGEE to MORTGAGOR, requiring immediate
PAYMENT where the advance and interest are payable
on DEMAND (s).

I HEREBY demand of you immediate payment of the principal
sum of £—, now owing to me on the security of an indenture

(r) Where notice or intimation is given of a fact, the person receiving
it is bound to inform himself of all the legal consequences resulting from
that fact, the rule being *ignorantia legis non excusat*; and, therefore, it
is unnecessary for the person giving the notice to point out any act to be
done, or omitted to be done, by the person receiving it.

As to the duties of trustees with respect to notices, see *Phipps v. Love-
grove*, L. R. 16 Eq. 80; *Hallows v. Lloyd*, 39 Ch. D. 686; *Ward v.
Duncombe*, [1893] A. C. 369, 392; *Low v. Bouverie*, [1891] 3 Ch. 82;
Porter v. Moore, [1904] 2 Ch. 367.

Where the Public Trustee is "custodian trustee," notice should be given
to him and to the managing trustees: see Public Trustee Act, 1906,
s. 4 (2) (b).

This form can be adapted to notice of the assignment of a legacy or
other interest under a will. Upon the assignment of an immediate legacy,
notice must be given to the executors who have not renounced, or to the
administrators, with the will annexed: *Re Dallas*, [1904] 2 Ch. 385.

(s) See *Worthington & Co., Ltd. v. Abbott*, [1910] 1 Ch. 588, for what

Persons
giving notice
not bound to
point out the
duty of the
person
receiving it.
Duties of
trustees as to
notices.

XVII. OF
MORTGAGEE
TO
MORTGAGOR
REQUIRING
PAYMENT.

of mortgage, dated the — day of —, and the interest at the rate of — per cent. per annum as from the — day of —, 19—, owing in respect thereof.

As WITNESS my hand, this — day of —.

To Mr [mortgagor].

[Signature of Mortgagee.]

XVIII. ONE PARTNER to his Co-PARTNERS, of INTENTION to RETIRE.

UNDER and by virtue of the power in this behalf contained in the deed or articles establishing our partnership, dated the — day of —, 19—, I hereby give you notice, that it is my intention to retire from the said partnership on the — day of — next.

As WITNESS my hand, this — day of —.

To [partners].

[Signature of Partner.]

XIX. NOTICE of EXPULSION of one PARTNER in CONSEQUENCE of BREACH of ARTICLES (t).

WE HEREBY give you notice, that, in consequence of your having broken the — article of our partnership deed, bearing date the — day of —, whereby it is provided [*transcribe article*], we hereby, in pursuance of the power in that behalf contained in the said deed, dissolve the said partnership, so far as you are concerned, from the — day of — next, on which day we shall be prepared to pay you the amount declared to be the

constitutes sufficient demand. The debtor must have a reasonable time after demand made in which to find the money and inquire into the authority of the person making the demand: *Toms v. Wilson*, 4 B. & S. 442; *Moore v. Shelley*, L. R. 8 App. Cas. 285, 293.

(t) It is not a condition precedent to the validity of the notice, in the absence of *mala fides*, that the partner serving the notice should, before serving it, disclose to his co-partner the causes of complaint against him, or give him an opportunity of being heard in his defence: *Green v. Howell*, [1910] 1 Ch. p. 495.

value of your share in the partnership effects at our last annual settlement of accounts, and interest thereon, as provided by the said partnership deed.

XIX.
OF
EXPULSION
OF PARTNER.

As WITNESS our hands, this — day of —.

To Mr. [partner].

[Signature of Partners.]

XX. OF DISSOLUTION of PARTNERSHIP, to be INSERTED in
the LONDON GAZETTE (u).

NOTICE is hereby given, that the partnership lately subsisting between us in the city of Bristol, in the trade or business of merchants, was this day dissolved by mutual consent [or, "effluxion of time," or otherwise, as the case may be] (x).

As WITNESS our hands, this — day of —.

(Signed) [A. B.]

[C. D.]

[E. F.]

XXI. NOTICE by a TENANT for LIFE to the TRUSTEES of the
SETTLEMENT of his GENERAL INTENTION to SELL, &c.,
under the Settled Land Act (y).

To [trustees], the trustees, and to Messrs. — & Co., the solicitors of the trustees of the settlement created by an indenture,

(u) See Partnership Act, 1890, s. 36, as to the effect of this notice.

(x) If the partnership is dissolved as to one only of several partners, add—

"So far as regards [retiring partner], who retires from the firm: All debts due to or owing by the late firm will be received and paid by [continuing partners], who will continue to carry on the said business under the present style of A. & Co."

(y) See sect. 101 of the S. L. A. 1925, with respect to the notices required to be given by tenants for life of their intention to exercise their statutory powers, given below:—

"(1) Save as otherwise expressly provided by this Act, a tenant for life or statutory owner, when intending to make a sale, exchange, lease, mortgage, or charge—

Notice to
trustees.

"(a) shall give notice of his intention in that behalf to each of the

XXI.
BY TENANT
FOR LIFE
TO TRUSTEES
OF INTENTION
TO SELL.

dated, &c. [or, by the will, dated, &c., and proved, &c., of [testator], late of —, Esquire, deceased].

I HEREBY give you notice, pursuant to the powers in this behalf vested in me by virtue of the Settled Land Act, 1925, that it is my general intention, from time to time, as and when opportunity shall occur, as tenant for life, to make sales, exchanges, and leases of the settled lands comprised in the indenture [or, will] above referred to, or such part or parts thereof, or such easements, rights, or privileges over or in relation to the same as I shall think proper.

As WITNESS my hand, this — day of —.

[Signature of Tenant for Life.]

trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees severally, each at his usual or last known place of abode in the United Kingdom; and

“(b) shall give a like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life or statutory owner, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom;

“every letter under this section being posted not less than one month before the making by the tenant for life or statutory owner of the sale, exchange, lease, mortgage, or charge or option, or of a contract for the same:

“Provided that a notice under this section shall not be valid unless at the date thereof the trustee is a trust corporation or the number of trustees is not less than two.

“(2) The notice required by this section of intention to make a sale, exchange, or lease, or to grant an option, may be notice of a general intention in that behalf.

“(3) The tenant for life or statutory owner is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, or leases effected, or in progress, or immediately intended.

“(4) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one month's notice.

“(5) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.”

It is doubtful, however, if a general notice would remain effectual for any long period; and on a change of tenant for life a new notice must, of course, be given.

XXII. NOTICE *by* TENANT *for* LIFE *of* INTENTION *to* SELL
SPECIAL PROPERTY *under the powers of the Settled Land*
Act, 1925 (z).

XXII.
BY TENANT
FOR LIFE
OF INTENTION
TO SELL.

To [*trustee*], *as in Precedent XXI.*, ante.

I HEREBY give you notice, that it is my intention to sell
[*or, lease*] such of the property, subject to the above mentioned
settlement [*or, will*], as is described in the schedule hereto.

As WITNESS my hand, this — day of —.

[*Signature of Tenant for Life.*]

SCHEDULE.

[*Giving a short description of the property to be sold.*]

XXIII. NOTICE *by* TENANT *for* LIFE *to the* TRUSTEES *of*
the SETTLEMENT of his INTENTION *to* MORTGAGE *under*
the Settled Land Act, 1925 (z).

To [*trustee*], &c., *as in Precedent XXI.*, ante.

I HEREBY give you notice, pursuant to the Settled Land
Act, 1925, that it is my intention, as tenant for life, to mortgage
the lands mentioned in the schedule hereto, part of the settled
lands comprised in the indenture [*or, will*] above referred to.

As WITNESS my hand, this — day of —.

[*Signature of Tenant for Life.*]

THE SCHEDULE ABOVE REFERRED TO.

XXIV. WAIVER *by* TRUSTEES *of* SETTLEMENT *or* WILL *of*
NOTICE *under Settled Land Act, 1925, s. 101 (4).*

To [*tenant for life*], the tenant for life in possession of the
property settled by [*as in Form XXI*].

WE [*trustees*], of the above mentioned [*will or settlement*], for
the purposes of the Settled Land Act, 1925, and in pursuance of
the power for this purpose given to us by sect. 101 of the said Act,
hereby generally waive the notice required by the said Act to be

XXIV.
BY TRUSTEES
OF
SETTLEMENT.

given to our solicitor and ourselves of your intention to make any sale, exchange, partition, or lease under the powers of the said Act [or, We [*trustees*], agree to accept as sufficient the notice, dated, &c., given by you of your intention to [*as above*], although less than one month's notice has been given.

AS WITNESS, &c.

XXV. NOTICE to LORD of the MANOR to ascertain COMPENSATION.

To [*Lord of the Manor*], Lord of the Manor of — (a).

TAKE NOTICE that I require you to ascertain the amount and nature of the compensation to be paid by me to you in respect of the extinguishment of the manorial incidents now affecting the property specified in the schedule hereto, formerly copyhold of the said manor, and now held by me in fee simple. In the event of failure to agree the said compensation between us I shall apply to the Minister of Agriculture and Fisheries for the appointment by him of a valuer to ascertain the said compensation pursuant to the Manorial Incidents (Extinguishment) Rules, 1925.

XXVI. TO PRODUCE TITLE DEEDS.

I HEREBY give you notice, and require you to produce to Mr. [*solicitor*], of —, solicitor, on the — day of — next, on his application at your residence in the city of —, all the deeds and writings mentioned or referred to in an indenture dated the — day of —, by which the same were covenanted to be produced by you to me [or, by which you acknowledged my right to production of the same]; and I hereby undertake to pay you the reasonable costs and charges which may attend the production of the said deeds and writings, on your informing me of the amount thereof.

AS WITNESS my hand, this — day of —.

(Signed) [*Covenantee*].

To Mr. [*covenantor*].

(a) See L. P. A. 1925, ss. 138 and 140, and also rule 2. As to compensation agreements, see Vol. I.

XXVII. PURCHASER *to* VENDOR *that his* PURCHASE-MONEY is PRODUCING *no* INTEREST.

XXVII. THAT
PURCHASE-
MONEY IS
PRODUCING NO
INTEREST.

I HEREBY give you notice, that the sum of £——, the unpaid portion of the purchase-money, payable by me to you under the contract between us, bearing date the —— day of ——, is now in the hands of my bankers, Messrs. ——, having been appropriated to a special account to my credit, and is producing no interest or advantage whatsoever [and therefore I shall hold myself discharged from any obligation henceforth to pay interest for the same].

AS WITNESS my hand, this —— day of ——, 19—.

To [*vendor*].

(Signed) [*Purchaser*].

XXVIII. VENDOR'S SOLICITORS *to* PURCHASER *to complete* PURCHASE.

SIR,

WE HEREBY give you notice, on behalf of our client, Mr. ——, of, &c., the vendor of the freehold house and lands lately contracted to be purchased by you by an agreement dated the —— day of ——, that the day thereby fixed for completion of the purchase is now long past, and that the vendor is ready and willing to make and execute, and to procure the concurrence of all necessary parties (if any) to a conveyance to yourself, or as you shall direct, of the fee simple in possession of the premises comprised in the said agreement, in accordance with the conditions and stipulations of the same; AND that the vendor requires you, within —— days from this date, to tender such conveyance for execution, and to complete the purchase, and pay the remainder of the purchase-money with interest up to the day of such completion, as provided by the said agreement: AND we further give you notice, that the vendor will hold you liable for all loss or damage which may be incurred by him by reason of any delay or default on your part in completing the said purchase, or otherwise in relation to the said agreement.

We are, &c.,

A. B. & Co.,

Vendor's Solicitors.

To [*purchaser*], Esq.

XXIX.
CESTUI QUE
TRUST TO
TRUSTEES TO
SELL STOCK.

XXIX. CESTUI QUE TRUST to TRUSTEES, *calling upon them to SELL STOCK, and place out MONEYS on MORTGAGE.*

I HEREBY authorise and request you to sell the sum of — Stock now standing in your names, as trustees of the will of [*testator*], my late husband, deceased, and to lend the moneys arising therefrom to [*intended mortgagor*], on the mortgage security of two leasehold messuages, situate in —, held for the remainder of a term of seventy years, commencing in the year 1904, and respectively subject to the several ground rents of £— and £—.

As WITNESS my hand, this — day of —, 19—.

To [*trustees*].

(Signed) [*Cestui que trust.*]

XXX. STATUTORY NOTICE to CREDITORS by EXECUTORS, &c. (b).

[A. B.], deceased.—Pursuant to the Trustee Act, 1925, notice is hereby given that all creditors and other persons having any claims or demands upon the estate of [A. B.], late of, &c., deceased (who died on the — day of —, 19—, and whose will was proved in the Principal [— District] Probate Registry of the High Court of Justice, on the — day of —, 19—, by [*executor*], of, &c., the sole executor named in the said will) [*or, administration of whose estate was granted to —, on the — day of —, by the Principal [— District] Probate Registry of the High Court of Justice*], are hereby required to send in writing full particulars of such claims and demands to the said [*executor or administrator*], or to the undersigned Messrs. [C. D.] & Co., of No. —, — Street, in the city of London, his solicitors, on or before the — day of — next, after which date the said [*executor or administrator*] will proceed to distribute the assets of the said [—], deceased, among the

(b) As to the distribution of the assets of a testator or intestate after notice given by the executor or administrator to creditors to send in their claims, see the T. A. 1925, s. 27. As to what is sufficient notice by personal representatives, see *Re Bracken*, 43 Ch. D. 1.

persons entitled thereto, having regard only to the claims and demands of which he shall then have notice, and that he will not be liable for the assets of the said [—], deceased, or any part thereof, so distributed, to any person of whose debt or claim he shall not then have had notice.

Dated this — day of —.

[C. D.] & Co.,
Solicitors for the Executor.

xxx.
STATUTORY
NOTICE TO
CREDITORS.

For notices relative to arbitrations, see "Arbitration," Vol. I.

PARTITIONS.

PRELIMINARY NOTE.

Under the Law of Property Act, 1925, s. 34, property held prior to the Act in undivided shares is now held upon the statutory trusts. (As to settled land, see Settled Land Act, 1925, s. 36.) The tenants in common thus become joint tenants upon trust for sale for their own benefit, and by agreement between themselves can convey to one of themselves for money or money's worth, thus the land can still be partitioned if none of the undivided shares were incumbered or settled at the date of the Act.

Where no money is paid for equality of partition, or where the amount so paid does not exceed 100*l.*, a 10*s.* stamp will suffice; but where the consideration exceeds 100*l.*, an *ad valorem* duty as on a conveyance on sale must be paid in respect thereof: see sect. 73 of the Stamp Act, 1891. As to the amount of such duty, see Vol. I., Conveyances, Preliminary Note. Stamp.

Presumably the proviso in sect. 73 of the Finance (1909-10) Act, 1910, that it shall not apply where the consideration is under 500*l.*, would apply to the sums paid for equality of partition; in which case, where they do not exceed 500*l.*, the lower scale of duty would be payable, and the deed should contain a statement as to value as in a conveyance (see Conveyances, Vol. I.); but until this question has been judicially decided it would be wiser to have the stamp adjudicated.

I. OF
PARTITION OF
FREEHOLDS
BETWEEN
TWO TENANTS
IN COMMON
EFFECTED BY
ONE DEED.

PRECEDENTS.

I. DEED of PARTITION of FREEHOLDS between TWO
PERSONS BENEFICIALLY ENTITLED as TENANTS in
COMMON effected by ONE DEED.

Parties.
Recitals:
of title;

of agreement
for partition;

of agreement
as to custody
of deeds.

THIS PARTITION DEED (a), made the — day of —, 19—, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the first part; the said [A. B.], of the second part; and the said [C. D.], of the third part. WHEREAS (b) at the commencement of the Law of Property Act, 1925, the said [A. B.] and [C. D.] were seised of the hereditaments hereinafter described in equal undivided moieties as tenants in common in fee simple in possession, free from incumbrances; AND WHEREAS the said [A. B.] and [C. D.] have agreed to effect a partition of the said messuages and hereditaments in manner hereinafter appearing; AND WHEREAS upon the treaty for the said partition, it was agreed that the deeds and documents of title relating to the said premises hereinafter described should be retained by the said [A. B.], who should enter into such acknowledgment and undertaking with respect thereto as are hereinafter contained.

Testatum.

NOW THIS DEED WITNESSETH as follows:—

Conveyance
by tenants in
common.
Parcels
by reference
to schedules.

1. In pursuance of the said agreement, and for the purpose of effecting such partition, they, the said [A. B.] and [C. D.] hereby convey unto the said [A. B.] all the hereditaments mentioned in the first schedule hereto (c), together with all ways and easements now or at any time heretofore used or enjoyed therewith respectively (d); To HOLD unto the said [C. D.] in fee simple in severalty.

(a) Stamp, 10s.

(b) This form can be used with the necessary variations in recitals where the parties became entitled after the 1st of January, 1926. This form cannot be used where an undivided share is incumbered.

(c) This is the most usual and convenient mode of describing the parcels in a partition deed; it may also often be advisable to refer to a plan annexed to the deed.

(d) Notwithstanding that sect. 62 of the L. P. A. 1925, renders the insertion of general words in most cases useless, it seems prudent in the case of a partition to insert an express grant of rights and easements which will operate as a grant *de novo* of any formerly existing rights and easements which may have been extinguished by unity of possession.

2. [*Repeat as above for share taken by C. D.*]

3. The covenants for title by the said [A. B.] and [C. D.] herein implied shall extend as to each of them only to the undivided moiety to which he was equitably entitled prior to the execution of these presents.

4. The said [A. B.], so far as respects one undivided moiety of the premises hereby expressed to be conveyed, and so far as respects the acts, deeds, and defaults of him, the said [A. B.], and of his ancestors and testators respectively, and those claiming under them respectively, hereby covenants with the said [C. D.]; and the said [C. D.], so far as respects the other undivided moiety of the said premises, and so far as respects the acts, deeds, and defaults of him the said [C. D.], and of his ancestors and testators respectively, and those claiming under them respectively, hereby covenants with the said [A. B.], that, notwithstanding anything done, omitted, or knowingly permitted by the said [A. B.] and [C. D.] respectively, or by any of their ancestors or testators, the said [A. B.] and [C. D.] have power to grant and convey all the premises hereby expressed to be conveyed in manner aforesaid.

5. The said [A. B.] hereby acknowledges the right of the said [C. D.] to the production of the several deeds and documents of title mentioned in the third schedule hereto, and to delivery of copies thereof, and undertakes for the safe custody thereof.

I. OF
PARTITION OF
FREEHOLDS
BETWEEN
TWO TENANTS
IN COMMON
EFFECTED BY
ONE DEED.

Covenants for
title;

for right to
convey;

Acknowledg-
ment and
undertaking
as to deeds.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

II. OF
PARTITION OF
FREEHOLDS
BETWEEN
THREE
TENANTS
IN COMMON
EFFECTED BY
SEPARATE
DEEDS.

II. DEED of PARTITION of FREEHOLDS *between THREE*
PERSONS BENEFICIALLY ENTITLED *as TENANTS in*
COMMON *effected by SEPARATE DEEDS.*

Parties.
Recitals :
of title ;

THIS DEED OF PARTITION (e), made the — day of —, 19—, BETWEEN [C. D.], of, &c.; [E. F.], of, &c.; and [A. B.], of, &c., of the first part; and the said [A. B.] of the second part: WHEREAS prior to the 1st day of January, 1925 (f), the said [A. B., C. D., and E. F.], seised of or entitled to the several messuages and hereditaments described in the first, second, and third schedules hereto, in equal shares as tenants in common, free from incumbrances.

of agreement
for partition ;

AND WHEREAS the said [A. B., C. D., and E. F.] have agreed to effect a partition of the said messuages and hereditaments in manner following, that is to say, that the hereditaments described in the first schedule hereto shall be taken and enjoyed by the said [A. B.] in severalty, in lieu of his undivided share in equity of the entirety of the said messuages and hereditaments; AND that the sum of £— shall be paid by the said [A. B.] to the said [C. D.], and the sum of £— shall be paid by the said [A. B.] to the said [E. F.] for equality of partition, and that the hereditaments described in the second and third schedules hereto respectively shall be taken and enjoyed by the said [C. D.] and [E. F.] respectively in severalty, in lieu of their respective undivided shares in equity of the entirety of the said hereditaments.

of convey-
ances of
other parts of
the property.

AND WHEREAS the said hereditaments described in the second and third schedules hereto respectively are intended to be conveyed to the said [C. D.] and [E. F.] respectively by two several deeds, bearing even date herewith, and made as to one of such deeds between the said [A. B.], of the first part, the said [E. F.], of the second part, and the said [C. D.], of the third part; and as to the other of the said deeds between the said [A. B.], of the

(e) Stamp, 10s., and a further *ad valorem* stamp on the aggregate amount of the sums paid for equality of partition, if more than 100l., as on a conveyance on sale. This being treated as the principal deed, the other separate conveyances will bear 10s. stamps only; but if any money is paid for equality of partition, each of such deeds should have a denoting stamp to show that the proper stamp duty was paid on the principal deed.

(f) When the equitable tenancy in common arose after the 1st January, 1925, substitute for this a recital of the instrument under which it arose.

first part, the said [C. D.], of the second part, and the said [E. F.], of the third part.

NOW THIS DEED WITNESSETH that, in consideration of the conveyances intended to be effected by the said indentures of even date herewith, as aforesaid, and in consideration also of the respective sums of £— and £— now paid by the said [A. B.] to the said [C. D.] and [E. F.] respectively (the receipt of which sums of £— and £— respectively the said [C. D.] and [E. F.] do hereby respectively acknowledge), the said [A. B.], [C. D.], and [E. F.] [*as trustees*] (*h*), hereby convey and release unto the said [A. B.] ALL and singular the messuages, lands, and hereditaments described in the first schedule hereto, together with

II. OF
PARTITION OF
FREEHOLDS
BETWEEN
THREE
TENANTS
IN COMMON
EFFECTED BY
SEPARATE
DEEDS.

Testatum.

Conveyance
by two of the
tenants
in common to
the third (*g*).

(*g*) Each of the other conveyances will be in the same form as this precedent, with the following variations. In the conveyance to C. D. of the hereditaments described in the second schedule, the parties will be (1) A. B., E. F., and C. D., and (2) C. D. There will be a recital of the intention to convey the premises in the "first and third schedules" by indentures of even date, varying the parties as required; and a further recital that upon such conveyance to A. B. the sums of £— and £— were paid to C. D. and E. F. respectively for equality of partition. And if the title deeds are to be retained by A. B., the deed will contain a recital—

"AND WHEREAS it has been agreed that the deeds and documents specified in the fourth schedule hereto shall be retained by the said [A. B.], and that he shall give such acknowledgment and undertaking in respect thereof as are hereinafter contained."

The sums paid for equality of partition will not be mentioned in the consideration, and the conveying parties and the parcels will be altered as required, and an acknowledgment and undertaking as to the deeds retained by A. B. will be added. The conveyance to E. F. will be in the same form (*mutatis mutandis*) as the conveyance to C. D.

(*h*) If the tenancy in common arose before the L. P. A. 1925, omit [Trustees] and substitute at the end of the draft an express covenant for title:—

[2]. Each of them, the said [C. D.] and [E. F.], hereby covenant with the said [A. B.] that, notwithstanding anything done, omitted, or knowingly permitted by the said [C. D.] and [E. F.], or either of them, or by any of their ancestors or testators, the said [A. B.], [C. D.], and [E. F.] have power to grant and convey in manner aforesaid.

II. OF
PARTITION OF
FREEHOLDS
BETWEEN
THREE
TENANTS
IN COMMON
EFFECTED BY
SEPARATE
DEEDS.

all ways and easements now or at any time heretofore used and enjoyed therewith respectively (*hh*); To HOLD the same unto the said [A. B.] in fee simple in severalty.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

IV. DEED of ASSIGNMENT *in the Nature of a* PARTITION,
by two PERSONS BENEFICIALLY ENTITLED as TENANTS
in COMMON ASSIGNING their respective SHARES in
LEASEHOLD PROPERTY held under SEVERAL LEASES (i).

Parties.

Recital
of leases.

Agreement
for mutual
assignment.

And for
payment of a
sum of money.

THIS DEED (*k*), made the — day of —, 19—, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the one part; the said [A. B.], of the second part; and the said [C. D.], of the third part: WHEREAS [*recite two leases, respectively comprising the several messuages afterwards described, granted to [R. S.]; also the will of [R. S.], bequeathing all his personal estate to [A. B.] and [C. D.], as tenants in common, and appointing them executors; and the death of the testator, and the grant of probate of his will, in the usual manner*]; AND WHEREAS the said [A. B.] and [C. D.] have agreed that the messuage and premises comprised in the firstly hereinbefore recited lease, shall be assigned to the said [C. D.] in severalty; and that, in consideration thereof, the messuage and premises comprised in the second hereinbefore recited lease, shall be assigned to the said [A. B.] in severalty; and, inasmuch as the value of the messuage to be allotted in severalty to the said [C. D.] exceeds the value of

(*hh*) See note (*d*), p. 218.

(*i*) It may be observed, that, if the portions of a leasehold estate allotted to several parties be comprised in one lease, an apportionment of the reserved rent would be requisite.

(*k*) Stamp, 10s., and *ad valorem* as on a conveyance by way of sale on the amount of the equality money, if exceeding 100l.: see Preliminary Note, *ante*, p. 217. This deed should be executed in duplicate, and the duplicate will bear a denoting stamp.

the messuage to be allotted to the said [A. B.], it has been agreed that the said [C. D.] shall pay to the said [A. B.] the sum of £—, as an equivalent for such excess, so far as respects the moiety of the said [A. B.] NOW THIS DEED WITNESSETH as follows:—

IV. OF
LEASEHOLDS
HELD UNDER
SEVERAL
LEASES.

Testatum.

1. In pursuance of the said agreement, and in consideration of the assignment hereinafter contained, and also in consideration of the sum of £—, for equality of partition now paid by the said [C. D.] to the said [A. B.] (the receipt whereof is hereby acknowledged), the said [A. B.] and [C. D.] as trustees hereby assign (*l*) unto the said [C. D.], all and singular the messuage or tenement and premises comprised in and demised by the first hereinbefore recited indenture of lease, dated the — day of —, To HOLD the premises hereinbefore assigned unto the said [C. D.], for the residue now unexpired of the term of — years, granted by the first hereinbefore recited lease; subject, nevertheless, to the payment of the rent, and to the performance and observance of all and singular the covenants, conditions, and agreements, respectively reserved and contained by and in the same lease, and on the lessee's part henceforth to be paid, observed, and performed.

[A. B. and
C. D.]
as trustees
assign to
[C. D.]
premises
comprised in
first lease.

Habendum.

Subject to
rent, &c.

2. In further pursuance of the said agreement, and in consideration of the assignment hereinbefore contained, the said [A. B.] and [C. D.], as trustees, hereby assign unto the said [A. B.], all and singular the messuage or tenement and premises comprised in and demised by the secondly hereinbefore recited lease, dated the — day of —: To HOLD the premises lastly hereby assigned unto the said [A. B.], for the residue now unexpired of the term of — years, granted by the secondly hereinbefore recited lease, SUBJECT, nevertheless, to the payment of the rent, and to the performance and observance of the several covenants and conditions reserved and contained by and in the secondly hereinbefore mentioned lease, and on the lessee's part henceforth to be paid, observed, and performed (*m*).

In considera-
tion of assign-
ment before
contained,
[A. B. and
C. D.]
assign to
[A. B.] his
moiety in
premises
comprised in
second lease.

Habendum.

Subject
to rents, &c.

IN WITNESS, &c.

(*l*) See note (*h*) as to this in preceding precedent.

(*m*) Cross covenants to pay rent and perform the covenants of the lease are implied under L. P. A. 1925, s. 140.

PARTNERSHIP.

PRELIMINARY NOTE.

Limited
partnership.

THE law of partnership was codified by the Partnership Act, 1890, and was modified in the case of limited partnerships by the Limited Partnerships Act, 1907, which came into force on the 1st January, 1908 (sect. 2), and in the case of partnerships formed under that Act, created two classes of partnerships: (1) "general partners," who carry on the business, and are liable for its debts and obligations; and (2) "limited partners," who contribute to the capital, but take no part in the management (sect. 6), and are not liable beyond the amount so contributed: sect. 4. Limited partnerships are restricted by the Act (sect. 4 (2)) to ten persons in the case of banking and to twenty persons in the case of other partnerships.

A limited partner must not, either directly or indirectly, withdraw his contribution during the continuance of the partnership: sect. 4 (3).

A limited partnership must be registered: sect. 5; the manner and particulars of registration being specified in sect. 8.

Any change in the name or nature, &c. of the partnership also requires registration under the Act: sect. 9 (1); and there is a penalty for default (2).

Sect. 7 of the same Act provides that, subject to the provisions of the Act, the rules of equity and common law applicable to partnerships so far as they are not inconsistent with the Partnership Act, 1890, shall apply to limited partnerships. A body corporate may be a limited partner: sect. 4 (4). - A limited partner may be entitled to a winding-up order: *Re Hughes & Co.*, [1911] 1 Ch. 342.

A precedent of articles of a limited partnership under the Act of 1907 is given (see Precedent III., *post*, p. 246), as it may be useful on occasions; but the Act is very little used, it being found more satisfactory in practice to have recourse to the provisions of the Companies (Consolidation) Act, 1908, as to the formation of private companies, whereby the liability of the members is limited to their shares. (See Lindley on Partnership, 9th ed., 926.)

Under the Registration of Business Names Act, 1916, s. 1, every firm in the United Kingdom carrying on business under a name, not being the true surnames of all the partners, and every individual or firm who, or a member of which, has changed his name has to be registered in manner directed by the Act. The manner and particulars required on registration are specified in sect. 3. By sect. 18 every individual and firm requiring registration is to have the name of such individual or firm legibly inscribed on all trade catalogues, circulars, business cards, &c., with penalties for default in so doing. (*O'Connor and Ould v. Ralston*, [1920] 3 K. B. 451, 456, 457; Lindley on Partnership, 9th ed. 160.)

As to what constitutes a partnership, see *Cox v. Hickman*, 8 H. L. C. 268; *Syers v. Syers*, 1 App. Cas. 174; *Ex parte Sheil*, 4 Ch. D. 789; *Pooley v. Driver*, 5 Ch. D. 458; *Ex parte Tennant*, 6 Ch. D. 303; *Ex parte Delhasse*, 7 Ch. D. 511; *Walker v. Hirsch*, 27 Ch. D. 460; *Re Stone*, 33 Ch. D. 541; *Badeley v. Consolidated Bank*, 38 Ch. D. 238; *Davis v. Davis*, [1894] 1 Ch. 393, *Re Beard & Co.* (1923), Hans Bkcy. Reps. 191. A partnership may be agreed on for the duration of the lives of the partners. See *Overy v. Vaughan*, Times Newspaper, 1925, Mar. 5, 6, 7, 10, 11.

A partnership may be constituted by a mere verbal agreement, even though it is to deal with land. (*Gray v. Smith*, 43 Ch. D. 208, 211; *De Nichols v. Curlier*, [1900] 2 Ch. 410, 416, 417.) The Statute of Frauds, s. 4 (in part repealed and re-enacted by s. 40 of the Law of Property Act, 1925), however, applies to agreements for partnerships. (See Lindley on Partnership, 9th ed. 107 *et seq.*) Having regard to the importance of documentary evidence and the many questions of difficulty that would have to be overcome by anyone seeking to prove the existence of an alleged partnership, it is more usual, and now almost universal, for a document (generally called Articles of Partnership) to be drawn up setting forth in precise and simple language the terms agreed upon between the proposed partners. Articles are for the guidance of persons who are not lawyers. (See Lindley on Partnership, 9th ed. 500.) Such documents when constituting a deed need not, by virtue of sect. 57 of the Law of Property Act, 1925, be any longer termed "indentures," but "deeds" simply.

A partnership deed requires a 10s. deed stamp, and also an *ad Stamps. valorem* stamp of 20s. per 100l. on any money paid by way

of premium or for the purchase of a share in the business. The same *ad valorem* duty is payable on the value of the capital voluntarily transferred by a father to a son by articles of partnership when such transfer practically amounts to an advancement: see sect. 74 of the Finance (1909-10) Act, 1910. And if the articles include provisions for a partner's widow or family on his decease, thus constituting a trust in their favour, it is apprehended that the articles will require stamping with an *ad valorem* stamp on the value of the capital or share affected by such provisions: sect. 74 of the Finance (1909-10) Act, 1910. Such a provision differs from a power to charge an annuity or to introduce a son, which powers are merely contracts between the parties, and do not charge the partnership assets, hence would probably not be chargeable with the *ad valorem* duty. But in any case the stamp should be adjudicated: see sect. 74 (2).

In the case of limited partnerships, the duty of 5s. for every 100*l.* or fraction of 100*l.* imposed by sect. 11 of the Limited Partnerships Act, 1907, on statements with regard to the amounts contributed by limited partners to limited partnerships, was under sect. 39 (1) (c) of the Finance Act, 1920, increased to 1*l.* on every 100*l.* or fraction of 100*l.*

See generally as to the law of partnership: Lindley on Partnership, 1924, 9th ed.; Pollock on Partnership; and Elph. Introd., 7th ed. 355.

PRECEDENTS.

I. ARTICLES of PARTNERSHIP *between Two TRADERS* (*a*) CONCISE FORM, *relying on the Partnership Act, 1890—* REGISTRATION *under the Registration of Business Names* *Act, 1916*).

Parties.

THIS DEED OF PARTNERSHIP (*a*), made the — day of —, BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c., of the other part; WITNESSETH that the said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

Form and
duration of
partnership.

1. The parties hereto shall become and be partners in the firm of "[B. & D.]," to carry on the business of —, for — years

(a) Stamp, 10s.; see *ante*, p. 225.

from the — day of —, or until the expiration of — months' notice in writing to determine the partnership (b), left by either partner for the other at the firm's registered place of business, at any time after the — day of —.

I. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
TRADERS
(CONCISE
FORM).

2. Within fourteen days after the commencement of business, the partnership firm shall be registered in the manner required by the Registration of Business Names Act, 1916. If any change is made or occurs in any of the particulars required to be given to the Registrar for the purpose of such registration, a statement in compliance with sect. 6 of the Act, specifying the date and nature of such change, to be signed by all the partners, shall forthwith be furnished to the Registrar (c).

Registration
of firm under
the Regis-
tration of
Business
Names Act,
1916.

3. The business of the firm shall be carried on at No. —, in — Street, or such other place as the partners shall hereafter from time to time agree on.

Place of
business.

4. The capital of the partnership shall be the sum of £—, to be contributed by the said [A. B.] and [C. D.] in equal shares, and to be credited as belonging to them in equal shares in the books of the partnership.

Capital to be
contributed.

5. The rent, and all rates, taxes, repairs, alterations, improvements, and outgoings, in respect of the said premises and shop, or other partnership place of business for the time being, or of the business, and all wages and salaries of all persons employed in or about the partnership business, and all insurances, including insurances under the Workmen's Compensation Acts, 1906 to 1923, and the employers' share of the costs arising out of the National Insurance Act, 1911, and amending Acts, if any, shall be paid out of the profits, or in case of deficiency of profits, then by the partners equally.

Expenses.

6. The profits and losses shall belong to and be borne by the said [A. B.] and [C. D.] in equal shares, and the profits, if any,

Relative
shares.

(b) For forms of notice to determine partnership, see Notices, Precedents XVIII. and XIX., *ante*, p. 210.

(c) See Registration of Business Names Act, 1916, ss. 1, 3, 5 and 6. As to penalty for default and relief from registration, see *Weller v. Denton*, [1921] 3 K. B. 103; *Hawkins v. Duché*, [1921] 3 K. B. 226. Care should be taken to see that sects. 11 and 18 of the Act, as to the certificate of registration being exhibited on the premises and the printing of the names of the partners on all trade circulars, &c., is strictly complied with.

I. ARTICLES
OF PARTNER-
SHIP BETWEEN

TWO
TRADERS
(CONCISE
FORM).

Monthly
drafts.

Rent of
house.

Lease of
partnership
premises.

Servants, &c

Attention
to business.

Restriction on
purchases.

Not to give
credit.

Not to release
debts, or incur
liabilities.

shall be divisible immediately after the signing of the general account hereinafter mentioned.

7. The said [A. B.] may draw out of the profits, sums not exceeding £—— in each calendar month; and the said [C. D.] may draw out of the profits, sums not exceeding £—— in each calendar month, but if in any year, the amount so drawn out by either partner, shall, after the yearly balance shall have been taken, be found to be in excess of the sum which such partner so drawing, is entitled to thereunder out of the net profits, he shall thereupon refund the difference between the amount so drawn out by him as aforesaid and his share in the net profits.

8. The said [A. B.], by whom the said messuage or shop and premises in which the business is carried on are held during the residue of a term of —— years from the —— day of ——, granted by a lease dated, &c., at a rent of £——, shall hold the premises in trust for the partnership; and shall be indemnified by the partnership against the said rent, and the lessee's covenants and conditions of the lease; and shall be credited in the partnership books with the sum of £—— (being the agreed value of the lease), as part of his contribution to capital (*d*).

9. No [apprentice] clerk, or servant, shall be taken, employed, or dismissed, without the consent of both partners.

10. Each partner shall devote the whole of his time and attention to the best advantage of the partnership business [and shall be entitled to take —— clear weeks' holiday in every year, at such time or times as may be mutually agreed upon by the said [A. B.] and [C. D.].]

11. Neither partner shall purchase goods to an amount exceeding £—— without the previous consent of the other in writing.

12. Either partner dealing with, or giving credit of goods or money to, any person after the request to the contrary by the other, shall immediately pay to the other the full value or amount of such goods or money as liquidated damages.

13. Neither partner shall, without the consent in writing of the other, compound, release, or discharge any debt owing to the partnership or otherwise discharge or diminish any security to the

(*d*) For a different arrangement with regard to the business premises, see Precedent II., cl. 11, *post*, p. 236; and see *ibid.* note (*z*).

partnership without receiving the full amount thereof, or engage the partnership name on any negotiable or other security, or for any debt, otherwise than in the usual course of business, or make himself liable as bail or surety for any person, or a corporation, or on any accommodation bill or note or policy of insurance, or enter into any wagering contract, or (without the consent of the other partner) make any assignment, either absolutely or by way of mortgage or declaration of trust, of his share or interest in the partnership, or any part thereof, or withdraw his share in the capital, or expose the partnership effects to the danger of being taken in execution [or be concerned out of the partnership in the business of ——].

I. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
TRADERS
(CONCISE
FORM).

14. The firm shall bank with ——, or such other bankers as the partners shall from time to time mutually agree upon, and all cheques, moneys, and other securities belonging to the firm (other than such moneys as are required for current expenses), shall be paid into or deposited with the said bank, and all cheques exceeding £—, bills, and other documents drawn for the purposes of the said business shall be signed by both the partners.

Bankers'
cheques.

15. All premiums and fees taken with apprentices, or the like, shall be part of the profits of the partnership.

Apprentice
fees, &c.

16. The partners respectively shall cause all accounts and entries usual in a business of a similar nature to be kept and made in proper books; AND all securities and vouchers shall be kept at the place of business, or at the bankers of the partnership, and be open to the inspection of each partner or his agent (e).

Books of
account.

17. On the — day of —, and on the same day in every subsequent year, the partners shall either themselves, or by some person or persons engaged in a like business, take a general account and a just valuation of the assets and liabilities of the partnership, and of all other matters and things generally entered in accounts of a like nature, and such general account shall be prepared and audited by such chartered accountant as the partners

Annual
account.

(e) By the Partnership Act, 1890, s. 24 (9), the books are to be kept at the principal place of business, and each partner or his agent has the right of inspection, and to take copies subject to any agreement to the contrary: see *Bevan v. Webb*, [1901] 2 Ch. 59; *Norey v. Keep*, [1909] 1 Ch. 561, followed and approved in *Dodd v. Amalgamated Marine Workers' Union*, [1924] 1 Ch. 116.

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OF PARTNER-
SHIP BETWEEN
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(CONCISE
FORM).

shall from time to time mutually appoint, and shall be entered in a book and signed by the partners, and when so signed the entries in such book shall be conclusive, save that if within six months from the date of the signing of such book any manifest error shall be found therein, such error shall, at the request of either partner, be rectified.

Winding-up
by reference
to Partnership
Act, 1890,
ss. 39 & 44.

18. The partnership shall, upon dissolution by effluxion of time or otherwise, be wound up, and the assets and liabilities dealt with in accordance with the provisions applicable thereto contained in the Partnership Act, 1890.

Power of
expulsion.

19. If either partner shall infringe any of the clauses numbered 9, 11, 12, 13, 14 and 16 respectively, or become insane (*f*), or enter into any arrangement or composition for the benefit of his creditors, the other partner may forthwith determine the partnership by notice in writing, left at the firm's registered place of business, and may thenceforth continue the business alone, and may advertise notice of the dissolution in the *London Gazette*, and, if necessary, sign the name of the infringing partner in such notice of dissolution (*g*).

Option to
surviving
partner to
purchase
deceased part-
ner's share.

20. Upon the dissolution of the partnership by the death of either partner, the surviving partner, or in case of dissolution by notice under clause 19 hereof, the partner giving such notice shall have the option of purchasing, at a fair value [*or*, at a valuation to be made by arbitrators or their umpire as hereinafter mentioned] as from the date of dissolution, such dying or outgoing partner's share of the net assets and effects of the partnership, including therein the goodwill of the business, such option to be exercised in writing within ——— calendar months from the date of the dissolution (*h*).

(*f*) As to the effect of lunacy on the partnership, see Partnership Act, 1890, s. 35; Lindley (9th ed.), 686.

(*g*) As to the jurisdiction of the Court to order the advertisement of a dissolution, where the partnership is dissolved by consent, see *Hendry v. Turner*, 32 Ch. D. 355. As to the power of expulsion, see P. Act, 1890, s. 25; *Green v. Howell*, [1910] 1 Ch. 495; and as to professional misconduct, see *Clifford v. Timms*, [1908] A. C. 12; *Re A Solicitor*, [1912] 1 K. B. 302.

(*h*) Where an English company trading in partnership with a German company was dissolved by war between England and Germany, it was held that the German company was entitled to a share in the profits

21. In the event of the purchase of a deceased or outgoing partner's share under the last preceding clause the following provisions shall take effect:—

(1) The purchase-money shall be paid by three equal instalments at the respective periods of six, twelve, and eighteen calendar months from the date of the dissolution.

(2) The payment of such instalments, with interest at the rate of 4 per centum per annum (*i*), for so much of the purchase-money as shall for the time being remain unpaid at the date of payment of each such instalment (*k*), and also the indemnity of the retiring partner, or of the executors or administrators of the deceased partner, shall be secured by the purchaser's bond or a floating charge on the assets of the said business.

(3) The retiring partner or his representatives shall execute all such deeds and documents, and perform all such acts as may be necessary to vest the partnership property, including the goodwill, in the partner so exercising the said option as aforesaid at the date of the dissolution [and shall not carry on or be engaged in the business of —, either directly or otherwise, during the remainder of the said partnership term].

(4) If the said [B.] shall be the purchaser, he may, at his option, cause the lease of the said messuage at — to be included in such valuation and purchase.

22. All notices authorised or required to be given to either partner hereunder shall be deemed to be duly served if deposited, addressed to such partner, at the counting-house or office of the partnership.

23. If at any time any dispute, doubt, or question shall arise between the said partners, or their respective executors or adminis-

I. ARTICLES
OF PARTNER-
SHIP BETWEEN
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FORM).

Proviso for
purchase of
deceased or
retiring part-
ner's share.

Arbitration
clause (*l*).

made after the dissolution by the carrying on of the business by the English company with the aid of the German company's capital: *Stevenson (Hugh) & Sons v. Aktiengesellschaft, &c.*, [1918] A. C. 239.

(*i*) In the absence of express stipulation interest is not generally payable on the share of a partner after dissolution: *Barfield v. Loughborough*, L. R. 8 Ch. App. 1.

(*k*) It should appear clearly that interest is to be payable on the unpaid balance, and not only on the amount of each instalment: see *Orr Ewing v. Orr Ewing*, 8 App. Ca. 822.

(*l*) This will not bind a mortgagee of a partner's share: *Bonnin v. Neame*, [1910] 1 Ch. 732.

I. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
TRADERS
(CONCISE
FORM).

trators, either on the construction, meaning, or effect of these presents, or respecting the accounts, transactions, profits, or losses of the business, or otherwise in relation to the partnership, or the dissolution or winding-up thereof (*m*), then every such dispute, doubt, or question shall be referred to two arbitrators, one to be appointed by each party or their umpire pursuant to the Arbitration Act, 1889, or any statutory modification thereof for the time being subsisting.

IN WITNESS, &c.

II. ARTICLES OF PARTNERSHIP *between* THREE
TRADERS, *with* ORDINARY CLAUSES.

Parties.
Testatum.
Mutual
covenants.

THIS DEED OF PARTNERSHIP (*n*), made the — day of —, BETWEEN [A. B.], of, &c., of the first part, [C. D.], of, &c., of the second part, and [E. F.], of, &c., of the third part: WITNESSETH that each of them, the said [A. B.], [C. D.], and [E. F.] (so far as the covenants, stipulations, and provisions hereinafter contained are to be observed and performed by him, his executors or administrators), hereby covenants with the others of them jointly and severally in manner following, that is to say:—

Business and
duration of
partnership.

1. The said [A. B.], [C. D.], and [E. F.] shall become and henceforth continue partners in the trade or business of — (*o*), for the term of — years from the date of these articles, if the said partners or any two of them shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

Registration
under Regis-
tration of
Business
Names Act,
1916.

2. Within fourteen days after the commencement of business, the firm shall be registered in the manner required by the Registration of Business Names Act, 1916, and if at any time any change is made or occurs respecting any of the particulars neces-

(*m*) See *Vawdrey v. Simpson*, [1893] 1 Ch. 166.
(*n*) Stamp, see *ante*, p. 225.

(*o*) It is not *per se* illegal or impossible in law to form a partnership for carrying on a betting business: *Michael Jeffrey & Co. v. Bamford*, [1921] 2 K. B. 351. For a discussion as to illegal partnerships, see Lindley (9th ed.), 120 *et seq.*

sary to be furnished for the purpose of such registration, a statement in writing specifying the date and nature of such change, to be signed by all the partners, shall forthwith be furnished to the Registrar in accordance with sect. 6 of the Act (*p*).

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3. The said business shall be carried on under the style or firm of "[B.] and [Co.]," in the premises belonging to the said [A. B.], in — Street, in the city of —, or in such other place of business as the said partners shall from time to time agree upon.

Style of firm,
and place of
business.

4. If on or at any time after the — day of —, any partner shall be desirous of retiring from the partnership, he shall be at liberty to give to the other partners or partner, or to leave for them or him at the place where the business shall for the time being be carried on, notice in writing of his intention to retire therefrom (*q*); and at the expiration of [six] calendar months after the giving or leaving of such notice, the partner giving such notice shall cease to be a partner, subject nevertheless to the provisions contained in clause 24 of these articles.

Power to
determine
partnership
by notice.

5. If any of the said partners shall at any time become insane (*r*), or insolvent (*s*), or make or enter into any arrangement or composition with his creditors, or shall knowingly do, permit, or omit any act or thing contrary to any of the covenants, stipulations, and provisions herein contained, or if he shall (except with the consent of the other partners or partner, or by reason of sickness or physical injury), absent himself from business for more than — days at any one time, or more than — days in any one year, or if he shall become addicted to gambling or specu-

Power of
expulsion.

(*p*) See Registration of Business Names Act, 1916, ss. 1, 3, 4, 5 and 6. As to relief by the Court against the penalties for default under sect. 8, see *Hawkins v. Duché*, [1921] 3 K. B. 226; *Weller v. Denton*, [1921] 3 K. B. 103; see also note (*c*), *ante*, p. 227.

(*q*) For form of notice determining partnership, see *ante*, p. 210.

(*r*) As to dissolution on lunacy, see Lunacy Act, 1890, s. 119; Partnership Act, 1890, s. 35; and *J. v. S.*, [1894] 3 Ch. 72.

(*s*) Bankruptcy *ipso facto* determines a partnership: Partnership Act, 1890, s. 33. Insolvency in a clause of this nature includes inability to meet current liabilities, even though the person might be able to discharge his liabilities in full if his assets were all got in and realised: see *Bayley v. Schofield*, 1 M. & S. 338; *Biddlecombe v. Bond*, 4 A. & E. 332; compare *London and County Assets Company v. Brighton Grand Concert, &c. Palace, Ltd.*, [1915] 2 K. B. 493.

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lation, whether on the Stock Exchange or otherwise, or if by his mode of living, whether by intemperance or immorality or otherwise, by conduct detrimental to the interests of the partnership (*t*), he shall, in the opinion of the other partners or partner, bring discredit, whether directly or indirectly, upon the partnership business: Then, and in any of the said cases, the other partners or partner, if they or he shall think fit, shall be at liberty to give to the insane partner, or his committee, or to the partner who shall offend in any of the particulars aforesaid (as the case may require), or leave at the place where the business shall for the time being be carried on, a notice in writing expelling him from the partnership: And the partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for the purpose, determine accordingly as regards the partner to or for whom such notice shall be given or left, subject nevertheless to the provisions contained in clause 24 of these articles, and also subject and without prejudice to the remedies of the respective partners for the breach or non-observance or non-performance of all or any of the covenants, stipulations, and provisions herein contained [and the powers of a partner so expelled in relation to his sons, so far as not exercised in manner hereinafter provided, shall cease].

Advertise-
ment of
dissolution.

6. If the partnership shall be determined by notice under either of the preceding articles, the partner giving such notice shall be at liberty to cause a proper notice of the dissolution of the said partnership to be advertised in the *London Gazette*, and may, if necessary, sign the name of the partner to whom the said notice shall have been given to such advertisement or notice of dissolution.

Capital.

7. The capital of the partnership shall be the sum of £—, to be contributed by and be credited in the books of the firm as belonging to the said partners in the following proportions, namely, the sum of £—, being two-fourths thereof, by and to the said [A. B.]; the sum of £—, being one other fourth thereof, by and to the said [C. D.]; and the sum of £—, being the remaining fourth thereof, by and to the said [E. F.] (*u*): And each

(*t*) For what is "professional misconduct," see *Clifford v. Timms*, [1908] A. C. 12.

(*u*) Usually, a definite sum is advanced by the partners at the time of entering into partnership. It also frequently happens that the stock in

contribution (save as hereinafter provided) shall be paid in cash into the — Bank, Limited, to the account of the partnership on or before the — day of — next.

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8. If at any time hereafter it shall be determined [by a majority of the partners] to increase the capital, the additional capital shall, unless otherwise agreed, be contributed by the partners in the proportions in which they are for the time being entitled to the net profits of the business. AND each partner shall be credited in the books of the business with the further amount so contributed by him.

Increase
of capital.

9. Each partner shall be credited in the books of the business with interest at the rate of 5 per cent. per annum on his share of the capital, inclusive of any additional capital brought in by him as aforesaid, such interest to be paid in each year before division of profits.

Interest on
capital.

10. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said

Respective
proportions of
profits (x).

trade, &c. requisite for carrying on the trade is purchased of one of the partners. In such case, to the last part of clause in the text, add the following:—

“Out of the said sum of £—— the sum of £—— shall be forthwith paid to [A.], as and for the price or purchase-money of the stock in trade and fixtures heretofore used by him in his said trade or business of a ——, carried on in the said messuage, in —— Street aforesaid, and which stock in trade and fixtures shall be purchased by the partnership at the price aforesaid; and the partners shall be entitled to and interested in the said capital, stock in trade, and fixtures, in the proportions aforesaid.”

Stock in trade,
&c. to be paid
for.

If the stock in trade, &c. belonging to one of the partners is to be taken over as part of the capital contributed by such partner, then insert the following clause:—

“The stock in trade and plant belonging to the business heretofore carried on by the said [A. B.], the particulars whereof are entered in the books of the partnership, shall become the property of the partnership, and shall be taken over by the firm at a valuation to be made by a competent valuer, and the value thereof shall be treated as part of the capital to be contributed by the said [A. B.], and be deducted from the amount to be paid by him into the said bank as aforesaid.”

Stock in trade,
&c. to be taken
at a valuation.

(x) As to what are “profits,” see *Re Spanish Prospecting Co.*, [1911]

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[A. B.] to two fourth parts; the said [C. D.] to one other fourth part; and the said [E. F.] to the remaining one-fourth part thereof: AND the net profits shall be divided between the partners immediately after the settlement of the general annual account in each year (*y*).

Payment to
one partner
for rent.

11. The said [A. B.] shall be allowed by the partnership the clear yearly sum of £—, by way of rent for the said premises in — Street aforesaid, so long as the said business shall be carried on therein; but the said premises shall continue the sole property of the said [A. B.], subject only to the right of the partnership to use the same for the purposes of the partnership business (*z*) so long as the business shall be carried on therein.

Expenses of
partnership to
be charged
against
revenue.

12. All rent [including the said rent of £—] [expenses of repairs, alterations, and improvements], taxes, rates, assessments, and other outgoings which shall become payable in respect of the messuage wherein the said business shall from time to time be carried on, the costs of insuring the same and the stock in

1 Ch. 92; *Vulcan Motor, &c. Co. v. Hampson*, [1921] 3 K. B. 597; Lindley, 9th ed. 41, n. (a), 484.

(*y*) The pay received by a partner while serving as an officer in the army has been declared to form part of the partnership profits: see *Carlyon-Britton v. Lamb* (1922), 38 T. L. R. 298. The deed contained the word "office"; the holding of which during the partnership was to be treated as profits.

(*z*) Add, if so intended,

That one of
the partners
may occupy
part of
the house in
which the
business
is carried on.

"AND the said [A. B.] shall be at liberty, if he shall think proper, to use and occupy all such part of the said premises as is not used or wanted for the purposes of the partnership business, for the residence of himself and his family, without paying any rent or taxes for the same."

Or, if so intended,

"at the yearly rent of £—, to be paid or allowed by him to the partnership, in equal half-yearly portions, or proportionally for any less period, during the time of such occupation; but the said [A. B.] shall not be required to pay any proportion of the taxes in respect of his said occupation, and shall be at liberty to quit and leave the said premises, if he shall think proper, without any previous notice."

See also another arrangement as to the business premises, *ante*, Precedent I., cl. 8, p. 228.

trade and fixtures belonging to the partnership from loss or damage by fire, the salaries and wages of clerks, porters, and servants to be employed in the said business, and all insurances of such persons to be paid by the employer, whether under the Workmen's Compensation Acts, 1906 to 1923, or otherwise, and travelling expenses, and the interest on the capital payable to the respective partners, and all other disbursements and expenses, losses and damages incurred in the course of the said business, shall be charged against revenue in the profit and loss account of the said business, and in case of a deficiency appearing in that account upon taking any general annual account, such deficiency shall be refunded to capital by the said partners in the proportions in which they shall be respectively entitled to the net profits of the business, and until refunded shall be debited in their respective capital accounts with the firm.

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13. All premium and apprentice fees to be paid with any apprentice or other person, and all other fees, emoluments, and benefits received by the partners, or any of them, while members or a member of the firm, for services rendered or otherwise, in respect of any office of profit or appointment held by them or him, shall be treated and accounted for in the books of the business as profits of the partnership.

Apprentice-
ship fees and
emoluments
of appoint-
ments to be
treated as
profits.

14. The bankers of the partnership shall be the — Bank, or such other bankers as the partners shall from time to time agree upon; and all partnership moneys (not required for current expenses) shall be paid into the account of the firm at the said bank by the end of every week. Each partner shall be at liberty to draw on the partnership account, but only for the purposes of the partnership, or for the purposes mentioned in the next clause hereof, and only by drafts or cheques upon such bankers in the firm name (a).

As to bankers,
and drawing
cheques.

15. The partners shall be at liberty to draw out of the said business, in anticipation of their respective shares of profits, any sum or sums not exceeding the sums following, that is to say: the said [A. B.] the sum of £—— per calendar month; the said

Sums to
be drawn out
monthly.

(a) If so desired, instead of the words "each partner" to the end of this clause, say,

"All cheques, bills, and other writings pledging the credit of the firm shall be signed by the said — and —, and not otherwise."

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[C. D.] the sum of £—— per calendar month; and the said [E. F.] the sum of £—— per calendar month; such sums to be accounted for on taking the next annual general account as hereinafter directed; and any partner whose drawings shall, on the taking of such account, be found to exceed his share of the net profits, shall forthwith refund the difference.

No apprentice,
&c. to be taken
by one partner
without the
consent of the
other.

16. No apprentice, clerk, or servant shall be taken or engaged, or be employed in or about, or dismissed from, the said business, by any of the partners without the consent of the others of them (b).

To be faithful
to each
other, &c.

17. The partners shall be true and just to each other in all their transactions and dealings; and shall, at all times during the continuance of the partnership, diligently and faithfully employ themselves in the conduct and management of the said business, and the concerns of the partnership.

To give
information.

18. Every partner shall forthwith inform the other partners of all letters, accounts, writings, proposals, matters and things, which shall have come into his hands or knowledge touching the partnership business.

Not to engage
in other
business.

19. No partner shall, during the continuance of the partnership, without the consent of the others or other of them:—

(1) Either separately or in partnership with any other person, engage in or carry on, or be concerned or interested, directly or indirectly, in the business of ——, otherwise than on account and for the benefit of the partnership, nor engage in or carry on any other trade or business, nor become nor be a director of any joint-stock company (c).

Either
partner
to hire or
dismiss
servants
without
consent of the
other, except
in case of
special
request to
the contrary.

(b) If desired, the following alternative form may be used:—

“Any partner [*or*, the said [C. D.]] shall be at liberty to hire or dismiss any clerk, traveller, workman, or servant, without the consent of the others [*or*, of the said [A. B.], or of any future partners or partner to be admitted as hereinafter provided], except in cases where at any time a request to the contrary shall be made by the other partners [*or*, by the said [A. B.], or such other partners or partner as aforesaid], in which excepted cases the consent of all the partners for the time being shall be necessary, and no apprentice shall be taken except with the consent and for the benefit of all the partners for the time being.”

(c) *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416; *Chapman*

(2) Transact any business, or enter into any contract or agreement with, or give credit to, or lend or advance any money out of the partnership funds to any person, company, or corporation, after he shall be requested by the other partners not to do the same.

(3) Compound, release, or discharge any debt or duty which shall be due or owing to the partnership, without receiving the full amount thereof; nor sign any instrument whereby any debt or security shall be in anywise discharged, vacated, or diminished.

(4) Draw, accept, or sign any bill of exchange or promissory note, or contract any debt on account of the said partnership, or employ any of the moneys or effects of the partnership, or in any way pledge the credit thereof except in the usual and regular course of business.

(5) Become bail, surety, or security for any person or persons (*d*) [or draw, indorse, or accept any accommodation bill or note, or underwrite any policy of insurance, or expose himself to any other risk or hazard in any gaming transaction] (*e*).

(6) Make any assignment, either absolutely or by way of mortgage, or any declaration of trust of his share or interest in the said partnership, or any part thereof, or withdraw his share of the capital therein, or any part thereof.

(7) Knowingly do or permit anything whereby the moneys or effects of the partnership shall be seized, attached, extended, or taken in execution.

(8) Introduce any person or persons into the said firm as a partner [other than a son or a nephew].

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Neither partner to give credit, &c., after notice from the other not to do so.

Nor, without consent of the other, compound debts, &c.

Nor draw, &c., any bill, except in the regular course of business.

Nor become bail or surety, &c.

Nor assign his share (*f*).

Nor permit effects to be taken in execution.

v. Westerby, 58 Sol. J. 50; and see Partnership Act, 1890, s. 30; Lindley, 401.

(*d*) This prohibition is often found useful in affording partners a reason for refusing to become bail or surety.

(*e*) The clause within brackets is less frequently used than the stipulation not to become bail or surety. The principle of the objection, however, applicable to all such transactions, is the same; being, not that the offending partner directly brings any responsibility upon the firm by the acts in question, but that he exposes himself to risks, which might lead to a dissolution of the partnership, or be otherwise detrimental to its interests.

(*f*) See P. Act, 1890, s. 31; *Watts v. Driscoll*, [1901] 1 Ch. 294; *Bonnin v. Neame*, [1910] 1 Ch. 732, as to the rights of an assignee of the share of a partner.

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To keep
proper
accounts, &c.,
which are to
be open to the
inspection of
both partners.

General
account to be
annually
taken.

Provisions
for the admit-
tance of two
of the sons of
[A. B.] into
the firm on
their coming
of age (*h*).

20. The partners shall keep, or cause to be kept, proper books of account, wherein shall be entered all moneys received and paid, and all contracts entered into, and all business transacted on account of the partnership, and all other matters and things of which accounts ought to be kept, according to the usual and regular course of the said business, and which books of account together with all deeds, securities for money, letters, and papers belonging to the partnership (except such as shall be kept with the bankers of the partnership), shall be kept at the place where the said business shall be carried on, and shall, at all reasonable times, be open to the inspection of all the partners (*g*).

21. On the — day of —, in every year during the partnership, a general account in writing shall be made and taken by the partners of all the moneys, credits, property, and effects, and of the debts and liabilities of the partnership; and of all business transacted on account of the partnership during the then preceding year, or in the case of the first of such accounts, since the commencement of the partnership, and of all other matters and things usually included in accounts of a like nature, and for the purpose of such account a proper valuation shall be made of all items requiring valuation. Such general account shall be properly audited by a competent chartered accountant to be agreed upon by the partners, and shall be entered in a book, to be signed by the partners; and after such signature, each of the partners shall be bound thereby, unless some manifest error shall appear therein within the space of — calendar months next after the making up of such account, and be notified by any of the partners to the others of them within that time; and in such case only such error shall be rectified.

22. If and when [F. B.] and [G. B.], two of the sons of the said [A. B.], shall respectively attain the age of twenty-one years, the said [A. B.] shall be at liberty to introduce them or either of them into the partnership, and at once or from time to time, by will or otherwise, to give to the son or sons whom he shall so introduce the whole or any part or parts of the share of him, the said [A. B.],

(*g*) As to right of inspection, see Partnership Act, 1890, s. 24 (9); and note (*e*), p. 229, Precedent I.

(*h*) As to these provisions, see *Byrne v. Reid*, [1902] 2 Ch. 735. For a precedent of a deed to carry out these provisions, see *post*, p. 266.

in the partnership, but so nevertheless that whilst the said [A. B.] shall remain a member of the firm for the time being, he shall retain as his own share in the partnership at least one-third part of such share. AND FURTHER, that in case the said [A. B.] shall die before he has introduced a son into the partnership, or, having previously introduced a son, shall not by will or otherwise have given the whole of his share in the partnership to such son, the said [F. B.] and [G. B.] respectively, or such one of them as may not have been previously admitted, provided they or he signify their or his election within twelve calendar months after their or his respectively attaining the age of twenty-one years, or after the death of the said [A. B.], whichever shall last happen, shall be entitled to be admitted partners or a partner in the partnership firm, as from the time of signifying such election, and to such a share as the said [A. B.], by will or otherwise, shall have prescribed, or in default thereof to such a share as will give the whole share of the said [A. B.] between them in equal shares, or in case only one of such sons shall so become a partner, then so as to give to such son the whole of the said share: AND FURTHER, that after the death of the said [A. B.], whilst he may have only one son in the business, such son, subject to any contrary directions which shall have been given by the said [A. B.] by his will or otherwise, shall be entitled to the whole of his father's share in the meantime, and until it shall be ascertained that another son of the said [A. B.] will be admitted into the firm: AND FURTHER, that if on the death of the said [A. B.] he shall have no son in the firm, and shall not by will or otherwise have signified his intention to exclude all his sons from being admitted into the partnership, his personal representatives shall be entitled to his share of the profits of the said business, whilst the same shall be continued by his surviving partners, or any of them, and until it shall be ascertained whether a son of the said [A. B.] will be admitted into the firm for the time being, charged nevertheless with the payment of — per cent. on the annual amount thereof, and so in proportion for any less period, by way of compensation, to such surviving partners or partner, for their trouble in realising the profits of the business, the said personal representatives allowing the share of capital of the said [A. B.] to remain in the business for the same period: AND FURTHER, that if the said [F. B.] shall die without having been admitted, or shall elect not to be admitted

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In case
[A. B.] shall
die leaving no
son or only
one son in the
firm.

If [A. B.]
shall die
leaving no son
in the firm,
and without
having
signified his
intention to
exclude his
sons from
being
admitted,
provision as
to carrying on
the concern
until the
admittance
of a son.

Power for
[A. B.] by
will to
substitute

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another son
for [F. B.].

No son to be
admitted
without
executing a
deed.

As to capital
to be brought
in by each
son.

Proviso for
purchase of
deceased or
outgoing
partner's
share (i).

into the partnership, the said [A. B.] shall have power, by will or otherwise, to substitute another son, whose name in such case shall for all purposes be deemed to have been inserted in these articles, and in every subsequent document, if any, relating hereto, instead of the said [F. B.]; AND each son who shall so be admitted a partner as aforesaid shall continue in the business until there shall cease to be any other member of the firm, or any other person entitled to become a member thereof; AND FURTHER, that no son of the said [A. B.] shall be entitled to be admitted into the partnership until he shall have executed a deed of accession containing covenants on his part to observe all the stipulations of the partnership articles so far as applicable to his share and the position he will occupy in the firm, and particularly a covenant diligently to employ himself in the business thereof: AND FURTHER, that each such son shall bring into and employ in the partnership an amount of capital bearing the same proportion to his share in the partnership as his father's original capital bore to his share therein, and the father's share of capital shall from time to time be reduced accordingly.

23. [*Similar clauses as to the introduction of two sons of the said [C.D.].*]

24. In case of the death or bankruptcy or retirement under clause 4, or expulsion under clause 5 hereof, of any partner before the expiration of the partnership term, the share of such partner, as from the date of his death or ceasing to be a partner, shall belong to the remaining partners or partner, and if more than one in shares proportionate to their then shares in the profits of the business; AND such remaining partners (if more than one) shall continue in partnership under the terms hereof so far as applicable; AND the deceased partner's estate, or the outgoing partner or his estate (as the case may be), shall be entitled to the amount or value of his share in the capital of the partnership with interest to the date of his death or ceasing to be a partner; AND ALSO if that event happens on a day fixed for taking the general annual account to his share of profits as appearing from such account, or

(i) As to the representatives of a deceased partner not being "partners" within sect. 1 of the P. Act, 1890, see *Re Fisher & Sons*, [1912] 2 K. B. 491.

if such event happens on any other day (*k*) to an allowance in lieu of profits at the rate of — per cent. per annum on his share in the capital up to the day of such event from the last day for taking the general annual account, or in case such event happens before the — day of — from the commencement of the partnership, but subject in any case to the deduction of any drawings by such partner on account of current profits; AND the last general annual account shall be binding upon the representatives of the deceased partner, or the outgoing partner or his representatives (as the case may be), and they or he shall not be entitled to examine the books of the partnership; AND the aggregate amount to which the estate of a deceased partner, or an outgoing partner or his estate, shall be entitled under this clause, together with interest at the rate of — per cent. per annum from his death or ceasing to be a partner, shall be paid by the remaining partners or partner within — calendar months from the happening of such event; AND as from the date of such event the assets (including the goodwill) of the business shall belong to and the liabilities thereof shall be borne by the remaining partners or partner; AND all assurances, indemnities and releases, notices in the *London Gazette*, and other instruments and acts necessary or proper for giving effect to this clause shall be executed, made, and done. The costs of and incidental to carrying this clause into effect shall be borne by the remaining partners or partner, and the representatives of the deceased partner or the outgoing partner (as the case may be) in shares proportionate to their respective shares in the capital.

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Costs.

25. Upon dissolution of the partnership in any event not otherwise herein provided for, a general account and valuation of the assets, liabilities, and transactions of the partnership shall be taken

Dissolution
and winding-
up of the
partner-
ship (l).

(*k*) As to the date of taking assets of a deceased partner at a fair value, see *Cruikshank v. Sutherland* (1923), 92 L. J. Ch. 136.

(*l*) The following short form may be substituted, if desired:—

“Upon dissolution of the partnership in any event not hereinbefore provided for, the affairs thereof shall be wound up and the assets and liabilities dealt with in accordance with the provisions of the Partnership Act, 1890:”

Dissolution.
Short form.

see P. Act, 1890, ss. 39, 44; *Hill v. Fearis*, [1905] 1 Ch. 466; *Garner v. Murray*, [1904] 1 Ch. 57.

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and made, and the assets and property shall be sold and realised, and the debts due to the partnership got in; AND the moneys arising thereby shall be applied (1) in discharge of the liabilities of the partnership, and the expenses of liquidating the same, and realising the assets thereof; (2) in payment to each partner or his representatives of the amounts due to him in respect of unpaid interest or profits and capital; and (3) the surplus, if any, shall be divided between the partners or their representatives in the shares in which they shall be entitled to the net profits of the business, and the partners or their representatives shall execute and do all such instruments and things as shall be necessary or proper for carrying this clause into effect, and for their mutual indemnity and release.

Valuation of
goodwill.

26. For the purposes of valuation, the goodwill of the partnership shall be deemed to be equal to three years' purchase of the average net yearly profits of the said business for the last preceding — years, or for the period which shall have elapsed from the commencement of the partnership if less than — years.

In case of
A. B.'s death,
surviving
partners to
have option
of purchasing
lease of busi-
ness premises.

27. In case the said [A. B.] shall die before the expiration of the partnership term, then the surviving partners or partner (if only one) shall have the option of purchasing from his representative or representatives the messuage in — Street, —, aforesaid, where the business is now carried on, at the price of £—, provided that the surviving partners or partner signify in writing their or his intention of purchasing the said messuage to the representative or representatives of the said [A. B.] within three calendar months after his death; and in such case the surviving partners or partner shall be entitled to an assignment (to be prepared at their or his expense) of the lease of the same premises for the residue which shall then be unexpired of the said term, subject to the rent and to the lessee's covenants reserved by and contained in the said lease.

Retiring part-
ner not to
compete with
firm.

28. No retiring partner shall, during the unexpired residue of the partnership term, commence, or carry on, or engage or be interested, directly or indirectly, in the trade or business of —, at — aforesaid, or within a distance of — miles therefrom (*m*).

(*m*) As to agreements in restraint of trade, see Vol. I., Agreements, Precedent X., p. 38, note (*g*). And see note (*y*) on p. 531, in Lindley on Partnership (9th ed.).

29. If the said [C. D.] shall die at any time during the said term of — years, leaving a widow, then (without prejudice to the provision contained in clause 24 hereof with regard to the ascertainment and payment out to his personal representatives of the value of his share) such widow shall be entitled during her life to an annuity of £—— to accrue from day to day, the first payment in respect of such annuity to be made on the first of the usual quarter-days which shall happen after the day of his death, and to be for the period which shall have elapsed since that day, and the annuity to be thereafter payable by equal quarterly payments on the usual quarter-days, and to be secured by the bond or deed of covenant and at the expense of the then remaining partners or partner, to be executed in favour of and to be delivered to such widow, and to be charged on the net profits of the business so long as same shall be carried on by them or him either alone or in partnership with any other person or persons.

II. ARTICLES
OF PARTNER-
SHIP BETWEEN
THREE
TRADERS
(COMMON
FORM).

Provision for
payment of
an annuity to
the widow of
a deceased
partner.

30. In all matters relating to the management and conduct of the partnership business, notwithstanding anything herein contained to the contrary, the decision of a majority [in value (*n*)] of the partners shall be conclusive and bind all the partners.

Decision of
majority to
bind partners.

31. Subject to the provision contained in the last preceding clause, if at any time any dispute, &c. [*continue as in Precedent I., cl. 23, ante, pp. 231, 232.*]

Arbitration
clause.

32. [*Provision as to notices, see Precedent I., cl. 22, ante, p. 23.*]

IN WITNESS, &c.

(*n*) If the words in brackets are omitted any two of the partners may overrule the third, as regards any matter relating to the management or conduct of the business. The effect of inserting the words, in the present case, will be that A. B. having a share in the partnership equal to the aggregate shares of C. D. and E. F., cannot be overruled by them in such a matter, and unless an arrangement can be arrived at, the matter will have to go to arbitration.

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

Parties.

Recital of
agreement
for partner-
ship.

Testatum.

Business and
duration of
partnership.

Place of
business.

Description
of partners,
"limited"
and
"general."

III. ARTICLES of LIMITED PARTNERSHIP for a TERM of YEARS (o), under the Limited Partnerships Act, 1907.

THIS DEED OF PARTNERSHIP (p), made the — day of —, 19—, BETWEEN [A. B.] (q), of, &c., of the first part; [C. D.], of, &c., of the second part; [E. F.], of, &c., of the third part; and [G. H.], of, &c., of the fourth part.

WHEREAS the parties hereto have agreed to carry on in partnership together, as a limited partnership, pursuant to the Limited Partnerships Act, 1907, the business of — for the period and upon the terms hereinafter expressed.

NOW THIS DEED WITNESSETH, that the parties hereto hereby mutually covenant and agree as follows:—

1. The parties hereto shall become and be partners under the firm of "[B. C. & Co.]" in the business of — for — years from the — day of —, 19—, if they or any two or more of them shall so long live, subject to determination of such partnership as hereinafter provided.

2. The firm shall, within the period mentioned in sect. 5, be registered pursuant to the Registration of Business Names Act, 1916, in the manner directed by that Act, and if any change is made or occurs at any time in the particulars necessary to be furnished for the purpose of such registration, a statement specifying the date and nature of such change, and signed by all the partners, or by some individual who is a partner, as specified in sect. 4 of the Act, shall forthwith be furnished to the Registrar in compliance with sect. 6 thereof. Upon registration the certificate of the firm shall be exhibited as required by sect. 11, and the names of the partners shall, in pursuance of sect. 18, be set out in the manner required by the section (r).

3. The business shall be carried on at —, or at such other place as the partners shall from time to time determine.

4. The said [A. B.] shall be a limited partner, and the said [C. D.], [E. F.], and [G. H.] shall be general partners within the meaning of the Limited Partnerships Act, 1907.

(o) See, as to limited partnerships, Preliminary Note, ante, p. 224.

(p) Stamp, see Preliminary Note, pp. 225, 226.

(q) Limited partner. The other partners are "general."

(r) Under sect. 4 of the Registration of Business Names Act, 1916, the statement may be signed by one of the partners.

5. The partnership shall forthwith be registered as a limited partnership as required by and pursuant to the provisions contained in the Limited Partnerships Act, 1907, and if at any time during the continuance of the partnership the changes specified in sect. 9 of the Act occur, the statement in the said section mentioned shall be forwarded and the requirements of the Act relating thereto duly complied with. [Until registration of the partnership as aforesaid the business shall not be commenced] (s).

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

Registration
of partner-
ship (s).

6. On or at any time after the — day of —, 19— [the said [A. B.] may determine (t), or] any of the said general partners may retire from the said partnership on giving to the other partners or partner not less than — calendar months previous notice in writing of his intention in that behalf, and at the expiration of such notice [if given by the said [A. B.]], the partnership shall determine [accordingly; but if given by a general partner shall determine] so far only as regards the partner giving such notice.

Power to
determine
partnership
(u).

7. At any time after the — day of —, 19—, the said [A. B.] may, on giving to the other partners not less than one calendar month's previous notice in writing of his intention so to do, become a general partner instead of a limited partner, and at the expiration of such notice a statement, signed by the firm and showing the nature of the change thereby effected, shall be forthwith delivered or sent by post to the Registrar in compliance with sect. 9 of the Limited Partnerships Act, 1907.

Option
to limited
partner to
become a
general
partner.

8. At any time after the — day of —, 19—, the said [C. D.] may, on giving to the other partners not less than — calendar months' previous notice in writing of his intention so to do, become a limited partner instead of a general partner; AND

Option
to general
partner to
become a
limited
partner.

(s) See the Limited Partnership Act, 1907, ss. 5 and 8.

(t) Under sect. 6 (5) (e) of the Limited Partnerships Act, 1907, subject to any agreement expressed or implied, a limited partner is not entitled to dissolve the partnership by notice. And see *In re Hughes & Co.*, [1911] 1 Ch. 342.

(u) This clause is suitable where the limited partner's interest is considerably greater than that of the general partners. Where this is not the case the words in brackets should be omitted, and the limited partner, if desirous of retiring, must then become a general partner under clause 7, and give notice of retirement as such.

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

upon the receipt of such notice all proper steps shall at once be taken, valuations made and advertisements issued, for the purpose of carrying out the proposed change, and at the expiration of such notice, a statement, signed by the firm, showing the nature of such change shall forthwith be delivered or sent by post to the Registrar in compliance with sect. 9 of the Limited Partnerships Act, 1907 (*v*).

Capital (*x*).

9. The capital of the partnership shall be the sum of £——, to be contributed by and to be credited in the books of the partnership as belonging to the partners in the following proportions, namely, the sum of £——, being two-fifths thereof, by and to the said [A. B.]; the sum of £——, being one-fifth thereof, by and to the said [C. D.]; the sum of £——, being one other fifth thereof, by and to the said [E. F.]; and the sum of £——, being the remaining fifth thereof, by and to the said [G. H.]: AND each such contribution (save as otherwise hereinafter provided) shall be paid in cash into the —— Bank, Limited, to the account of the partnership on or before the —— day of —— next.

Increase of
capital.

10. [*Precedent II.*, clause 8, ante, *p.* 235.]

Interest on
capital.

11. Each partner shall be credited in the books of the business with interest at the rate of —— per cent. per annum on his share of the capital [inclusive of any additional capital brought in by him], such interest to be paid in each year before division of profits.

Payment to
partner for
rent.

12. [*Precedent II.*, clause 11 (*y*), ante, *p.* 236.]

Division of
net profits.

13. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said [A. B.] to two-fifths, and the said [B. C.], [C. D.], [E. F.], and [G. H.] to one-fifth each; AND the net profits shall be divided as soon as possible after the general annual account shall have been taken in each year.

Expenses of
partnership.

14. [*Precedent II.*, clause 12, ante, *p.* 236, adding the following words, “but so that the liability of the said [A. B.] [or, of

(*v*) See ante, *p.* 224.

(*x*) The capital found by the limited partner must be contributed at the time of entering into the partnership: see L. P. Act, 1907, s. 4 (2).

(*y*) This clause may require modification in the case of a limited partnership, the limited partner being rarely the lessee of the business premises.

the said [C. D.], if and when he shall become a limited partner], in respect of any such deficiency, shall not extend beyond the amount of capital (if any) for the time being standing to his credit in the books of the firm.”]

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

15. The general partners shall be at liberty, by monthly drawings or otherwise, to draw out of the said business, in anticipation of their respective shares of profits, any sum or sums not exceeding the sums following, that is to say, the said [C. D.] the sum of £——, the said [E. F.] the sum of £——, and the said [G. H.] the sum of £——, during any quarter of a year; such sums to be accounted for on taking the next general account, and if on taking such account the amount drawn out by any partner shall be found to exceed his share of the net profits, such partner shall immediately refund the excess.

Drawings.

16. The said [A. B.], while remaining a limited partner [or, the said [C. B.], if becoming a limited partner, so long as he remains a limited partner], shall not interfere with the management of the said business or sign the name of the firm; but he may exercise all the rights and powers conferred on limited partners by the Limited Partnerships Act, 1907.

Limited
partner not
to interfere
in the busi-
ness (z).

17. The death or bankruptcy of any partner shall not dissolve the partnership as regards the remaining partners.

Death or
bankruptcy
not to dissolve
partnership
as to other
partners (a).
Fidelity and
other clauses.

18—22. [*Insert clauses 16—19 of Precedent II., p. 238, varying these clauses by prefixing the word “general” to the words “partners” or “partner” in every case.*]

23. The general partners shall keep, &c. [*as in clause 20 of Precedent II., ante, p. 240.*]

Accounts to
be kept.

24. The bankers of the partnership shall be the —— Bank, or such other bankers as the general partners shall from time to time agree upon; AND all partnership moneys not required for current expenses shall be paid into the account of the firm at the said bank. All cheques, bills, and other writings pledging the credit of the firm shall be signed by all the general partners [or, “by the said [——] and [——]”], and not otherwise.

Bankers and
drawing
cheques.

25. [*Precedent II., clause 21, p. 240.*]

General
annual
account.

(z) See L. P. A. 1907, s. 6 (1).

(a) This clause excludes sect. 33 (1) of the P. A. 1890. See, as to a limited partner, L. P. A. 1907, s. 6 (2); Lindley, 959.

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

26. [*Precedent II., clause 25, p. 243.*]

27. [*Precedent II., clause 26, p. 244.*]

Dissolution
and winding-
up (b).

Valuation of
goodwill.

Purchase by
continuing
partners of
share of
deceased
partner.

28. If, during the partnership, any general partner shall die; become bankrupt, or retire, the share of such partner shall, as from his so dying or ceasing to be a partner, belong to the remaining general partners or partner, and, if more than one, in shares proportionate to their then shares in the profits of the business, and the partnership shall be continued between the remaining partners, if more than one, under the terms hereof, so far as applicable; AND the deceased partner's estate, or the outgoing partner or his estate (as the case may be), shall be entitled to the amount or value of his share in the capital of the partnership, with interest to the date of his death or ceasing to be a partner; AND ALSO if that event happens on a day fixed for taking the general annual account, to his share of the profits as appearing from such account, or, if such event happens on any other day, to an allowance in lieu of profits at the rate of — per cent. per annum on his share of capital up to that day, from the date of the last general account, or, in case such event happens before the — day of —, from the commencement of the partnership, but subject in any case to the deduction of any drawings by such partner on account of current profits; AND the last general annual account shall be binding on the representatives of the deceased partner, or the outgoing partner or his representatives (as the case may be) [and they or he shall not be entitled to examine the books of the partnership]; AND the aggregate amount to which the estate of a deceased partner, or an outgoing partner or his estate, shall be entitled under this clause, together with interest at the rate of — per cent. per annum from his death or ceasing to be a partner, shall be paid by the remaining general partners or partner within — calendar months from the happening of such event; AND as from the date of such event the assets (including the goodwill) of the business shall belong to and the liabilities thereof shall be borne by the remaining partners or partner, but not so as to increase the liability of the limited partner; AND all assurances, indemnities and releases, notices in the Gazette, and other instruments and acts necessary or proper for giving effect to this clause shall be executed, made, and done. The costs of and incidental

(b) See L. P. A. 1907, s. 6 (3).

to carrying this clause into effect shall be borne by the remaining general partners or partner, and the representatives of the deceased partner or the outgoing partner (as the case may be), in shares proportionate to their respective shares in the capital.

29. [*As in Precedent I., clause 23, ante, pp. 231, 232.*]

30. The costs of and incidental to these presents (including the costs of stamping the statement to be delivered to the Registrar under sect. 8 of the Limited Partnerships Act, 1907) shall be borne by all the partners in equal shares [*or, as may be agreed on between the said [A. B.], &c.*] (*d*).

IN WITNESS, &c.

III. ARTICLES
OF LIMITED
PARTNERSHIP
FOR A TERM
OF YEARS.

Arbitration
clause.
Costs (*e*).

IV. DEED of PARTNERSHIP *between* SOLICITORS, *with* SPECIAL CLAUSES *as to the* CUSTODY of DRAFTS, PAPERS, &c. (*e*).

THIS DEED OF PARTNERSHIP (*f*), made the — day
of —, 19—, BETWEEN [A. B.], of, &c., solicitor, of the one Parties.
part, and [C. D.], of, &c., solicitor, of the other part.

(*c*) No part of these costs can, it seems, be paid out of the capital contributed by the limited partner.

(*d*) Any other clauses which are appropriate and do not contravene the L. P. Act, 1907, may be added.

(*e*) It is common for partnerships between solicitors and other professional men to be formed upon terms such as the following:—An established firm of large practice takes in a junior partner, on his paying, for the purchase of the share to be held by him, a sum calculated on the average profit of the business for an antecedent period (frequently two years and a half or three years' purchase on the average profit of the last seven years); and if the incoming partner has been also in practice, the calculation usually is made on the excess of the profit of the purchased share over that of his own business during the same period.

As to
partnerships
between
solicitors.

The validity of the sale of the goodwill of a solicitor's business was established by a ruling of Lord Eldon in *Bunn v. Guy* (1803), 4 East, 190.

As to the return of premium on determination of the partnership before the date fixed, see the Partnership Act, 1890, s. 40; *Belfield v. Bourne*, [1894] 1 Ch. 521 (arbitrator's power). Special provision as to this should be made by the articles.

It is well settled that there is no illegality in an agreement by a

(*f*) For stamp, see Preliminary Note, p. 225.



IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Recitals:
of agreement
to become
partners;

of the average
amount of
their
respective
businesses.

Testatum.

In considera-
tion of a sum
of money
paid by one
partner to the
other.

Agreement to
become
partners.

Nature of
business.

Place of
business and
of firm.

WHEREAS the said [A. B.] and [C. D.] have agreed to enter into partnership as solicitors, in the [city] of London [*or, as the case may be*], for the term of — years [*or, for the period of —*], and under the stipulations and provisions hereinafter contained.

AND WHEREAS the said [A. B.] has been engaged in practice as a solicitor for — years, and holds several appointments [particulars of which are shown in the schedule hereto], and the said [C. D.] has been in practice as a solicitor for the last — years.

AND WHEREAS it is intended, as hereinafter stipulated, that the said [A. B.] shall be entitled to [three fourth] parts of the net profits to arise from the partnership business intended to be hereby established; and that the said [C. D.] shall be entitled to the remaining [one-fourth] part of such net profits; [AND it has been further agreed that the said [C. D.] shall pay to the said [A. B.], by way of premium, the sum of £—].

NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement [and in consideration of the sum of £—, now paid by the said [C. D.] to the said [A. B.], the receipt whereof is hereby acknowledged], the said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

1. The said [A. B.] and [C. D.] shall become and continue partners in the profession or business of solicitors, for the term of — years [*or, for the period of*] from the date hereof, if they shall so long live. The business shall include the ordinary business of solicitors, and acting as agents for country solicitors, and as auditors and receivers of rents and profits, and the holding of any other offices and appointments of profit usually held by solicitors. The partnership business shall be carried on under the style or firm of “[B.] and [D.],” at [No. — in — Square], or at such other place as the said parties shall from time to time agree upon.

solicitor to make an allowance to the representatives, or widow, or children of a deceased partner out of the profits of his business (*Gordon v. Dalzell*, 15 Beav. 351; *Sterry v. Clifton*, 9 C. B. 110); or for a person not duly qualified to be given a share in profits (*Harper v. Eyjolfsson*, [1914] 2 K. B. 411, 418); but, of course, an agreement made with an unqualified person admitting him to partnership is illegal, and renders both the solicitor and the unqualified person liable to the statutory penalties: *Hopkinson v. Smith*, 7 Moo. 242; *Williams v. Jones*, 5 B. & C. 103; *Scott v. Miller*, Johns. 220. See, too, Solicitors Act, 1843 (6 & 7 Vict. c. 73, s. 32); Lindley, 136, 137.

2. The firm shall, pursuant to the Registration of Business Names Act, 1916, be registered within the time and in the manner therein directed. If at any time any change occurs or is made in the particulars required to be furnished for the purpose of such registration, a statement specifying the date and nature of such change, to be signed by the said [A. B.] and [C. D.], shall be forthwith furnished to the Registrar pursuant to sect. 6 thereof. Upon registration the certificate of the said partnership shall, in compliance with sect. 11 of the Act, be exhibited as in such section directed; and pursuant further to sect. 18 of the same Act, the names of the said partners [A. B.] and [C. D.] shall be written or printed on all letters or correspondence of the firm (g).

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Registration
of firm under
the Registra-
tion of Busi-
ness Names
Act, 1916,
and exhibit-
ing Certifi-
cate, &c.

3. If on or at any time after the — day of — either partner shall desire to retire from the partnership, and shall give to the other partner, or leave for him at the registered place of business for the time being, notice in writing of such his desire, then on the expiration of six calendar months after giving or leaving such notice, the retiring partner shall cease to be a partner, and the partnership shall be determined accordingly, subject to clause 25 hereof.

Power to
determine
partnership
(h).

4. The capital of the partnership shall consist of the sum of £—, and of such other sum or sums of money as shall from time to time be wanted for carrying on the said business to advantage, which capital shall be contributed by and credited in the books of the firm as belonging to the partners in the same proportions as they shall respectively, for the time being, be entitled to the profits of the said partnership; and, as to the said sum of £—, shall be paid by them in the said proportions to the bankers of the partnership, on account thereof, on or before the — day of — next.

Capital.

Contributions
by partners.

5. The [leasehold] premises upon which the said business is now carried on, and the office furniture, books, boxes, safes, and fittings therein, shall become the property of the partnership, and shall be taken over at the sum of £—, as part of the capital to be contributed by the said [A. B.], and in reduction of the amount to be paid by him to the bankers as aforesaid. The said [A. B.]

Business
premises, &c.
to be taken
over.

(g) Under sect. 22 of the Registration of Business Names Act, 1916, interpreting the meaning of the word "business," a partnership between solicitors will require registration in pursuance of the Act.

(h) See sect. 32 of the Partnership Act, 1890.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

shall hold the said [leasehold] premises in trust for the firm, and shall be indemnified by the firm against the rent and the covenants and conditions reserved by and contained in the lease, dated the — day of —, under which the same premises are now held.

Additional
capital.

6. If any further capital be hereafter required for the purposes of the business it shall (unless mutually agreed otherwise) be contributed by the partners in the proportions in which they shall for the time being be entitled to the net profits thereof.

Interest on
capital
advanced.

7. If either partner shall at any time or times advance or pay, to or for the use or benefit of the said partnership, any sum or sums of money beyond the proportion which he is to contribute, under clause 4, then such partner shall be paid and allowed interest thereon after the rate of — per cent. per annum, before any division of profits shall be made.

Bankers.

8. Messrs. — & Co., or such other bankers as the said parties shall jointly approve, shall be the bankers of the partnership, and all moneys and securities of the firm [except such sums as are needed for current expenses] shall be paid into the said bank to the credit of the account of the firm.

Cheques, &c.
how to be
drawn.

9. All cheques, bills of exchange, promissory notes, and other negotiable instruments, made, drawn, indorsed, and accepted by either partner on the joint account of the said partnership, shall be made, drawn, indorsed, and accepted in the name of the firm.

Shares of
partners
in net profits.

10. The partners shall be respectively interested in and entitled to the net profits (*i*) of the partnership business in the proportions following (that is to say): [three equal fourth] parts shall belong to the said [A. B.], and the remaining [one-fourth] part thereof shall belong to the said [C. D.]; but the said [C. D.] shall have the option at any time after the — day of —, upon giving — days' notice in writing to the said [A. B.] of his intention to exercise such option, of purchasing a further share or shares in the capital, property, and net profits of the partnership business, but so that during the continuance of the partnership, the share or shares so held by him shall not exceed in the aggregate one-half of the said capital, property, and net profits, at a sum equal to three years' purchase of the annual net profits of the partnership attributable to the share so purchased. The purchase-money

Power to
junior partner
to acquire a
further share.

(*i*) As to the meaning of "profits," see note (*x*), *ante*, p. 235.

thereof shall be paid to the said [A. B.] within — calendar months after such notice as last aforesaid shall have been given, and after such payment the said [C. D.] shall be entitled to all further net profits accruing due and attributable to the share or shares so purchased, such net profits at the first division of profits thereafter to be apportioned.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

11. If both or either of them the said [A. B.] and [C. D.] shall die before the expiration of the said first [three] years of the partnership term, then the said [A. B.], or his personal representatives, shall be entitled to retain the whole of the said consideration or sum of £— (k).

Premium to
be retained in
case of death.

12. No [change shall be made in the London agents of the firm, and no] articulated or other clerk, pupil, or servant shall be taken, engaged, or employed, or dismissed, without the consent of both partners.

Agents,
clerks, &c.

13. All premiums which shall be received with articulated clerks, and all fees, emoluments, and benefits that shall arise from the exercise by the said partners respectively of the offices of agent, steward, or receiver, of any other person or persons, or of any public office or appointment whatever, shall be considered and accounted for as profits of the partnership.

Premiums,
&c. to be
considered as
profits.

14. The said [A. B.] shall be at liberty to draw out of the funds of the partnership for his personal expenses the sum of £— by monthly instalments, during any current year of the partnership; and the said [C. D.] shall be at liberty to draw out the annual sum of £— in the like manner; such sums to be accounted for on

Sums to
be drawn out
monthly by
the respective
partners.

(k) As to return of premium, *vide ante*, p. 251, note (e). If part of the premium is to be returned in case of death the following clause may be substituted for the above:—

“11A. If the said [C. D.] shall die at any time within the space of [two] years from the commencement of the partnership, and the said [A. B.] shall survive him, then, and in such case, the said [A. B.] shall and will allow to the personal representatives of the said [C. D.] the sum of £—, being a moiety of the said sum of £—: But if the said [A. B.] shall die within the space of [two] years from the commencement of the partnership, and the said [C. D.] shall survive him, then and in such case the personal representatives of the said [A. B.] shall pay to the said [C. D.] the sum of £—, for his own use.”

If [C. D.] die
within [two]
years, [A. B.]
to allow
moiety of the
premium.

If [A. B.] die
within [two]
years, his
representa-
tives to make
an allowance.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Expenses and
outgoings.

the taking of the general yearly account, as hereinafter mentioned (1).

15. The rent, rates, taxes, costs of fire insurance, and other expenses which shall become payable in respect of the offices or chambers in which the partnership business shall be carried on, the expenses of providing stationery or legal books, and of paying clerks and servants to be employed in the partnership business, and the premiums for insuring such clerks and servants under the Workmen's Compensation Acts, 1906 to 1923, and the National Insurance Act, 1911, or amending Acts, the expense of fees to counsel, attendances upon clients, and of travelling, and all other charges and expenses which may be incurred by the partners respectively in the course of and relating to the said business, including expenses of and incident to the performance of the duties of any such office or appointment as aforesaid, and all costs and damages which may be incurred on account of the said business, shall, in balancing the accounts of the firm, be charged against revenue. Losses shall be borne and paid by the partners in the shares in which they are entitled to the net profits, except that any loss or damage which shall happen through the wilful neglect or default of either partner, shall be made good by the person through whose default the same shall happen.

Books of
account.

16. The partners respectively shall keep proper books of account, and make therein true and perfect entries of all moneys received and paid, and all attendances and business transacted by the partners, or either of them, or their clerks or agents, and of all such other matters or things as ought to be entered in the same books in the usual and regular course of the said business, with all such circumstances of names, times, and places as may be necessary or convenient for better understanding the same. AND the said books of account, together with all deeds, securities, letters, and documents belonging or relating to the partnership, shall be kept in the offices of the partnership, or some other place to be

Partners to
refund excess
drawn out.

(1) If so intended, add,

"But if the sums drawn out by either partner during any current year of the partnership shall exceed the amount of his share of the net profits for such year, then such partner shall refund such excess as soon as the same shall be ascertained at the taking of such general yearly account as aforesaid."

appointed for the purpose by mutual consent; and shall at all convenient times be open to the inspection of both the partners.

17. [*Precedent II., clause 21, p. 240.*]

18, 19, 20. [*Precedent II., clauses 17, 18, and 19, p. 238, substituting "each" for "every," "neither" for "no," "other of them" for "others or other of them," and "other partner" for "other partners."*]

21. Neither partner shall undertake the prosecution or defence of any action or other legal proceeding, or transact any professional business, except on behalf of himself or his wife or children, or his, her, or their trustees, or enter into any contract with any person or persons, after he shall be requested in writing by the other partner not to do the same. [Each partner shall punctually pay any separate debts and engagements he may incur or enter into and keep indemnified his co-partner against the same or his representatives, and all property belonging to the partnership against the same, and all actions, costs, claims, and demands in respect thereof.]

22. [*Expulsion clause for breach of particular stipulations, Precedent I., clause 19, ante, p. 230, substituting clauses 9, 12, 13, 18, 19 and 20 for the clauses there mentioned; or general expulsion clause, Precedent II., clause 5, ante, p. 233, with such variations as may be required.*]

23. In case the partnership shall be dissolved by notice under the clause lastly hereinbefore contained, the partner to whom such notice of dissolution shall have been given, shall not nor will, for the space of [seven] years thenceforth, either alone or in partnership with any other person or persons, practise or engage in the profession or business of a solicitor at — aforesaid, or within the distance of [ten] miles therefrom [*or, shall not nor will, either alone or in partnership with any other person or persons, for the space of [seven] years after the dissolution of the said partnership, be concerned professionally, or transact any business, either as principal or clerk, for any person or persons who shall have been a client or clients of the said partnership*]: PROVIDED ALWAYS, that if such partner shall in any respect break or infringe this present covenant, then and in such case he the partner so breaking or infringing the same, or his personal representatives, shall immediately thereupon pay to the other of the parties hereto, or his personal

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

General
annual
account.

Attention
to business
and other
fidelity
clauses.

Neither
partner to
undertake
any action,
&c. after
being
required
by the other
not to do so.

To pay his
own debts,
&c.

Expelled
partner not to
practise for a
certain period.

Or not to
transact
business for
the clients of
the firm.

On breach of
covenant to
pay a certain
sum as
liquidated
damages.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Dissolution of
partnership.

Option to
continuing
partner to
purchase
share of
outgoing
partner.

representatives, the sum of £—— as and for liquidated damages, and not by way of penalty.

24. Upon dissolution of the partnership [in any event not herein otherwise provided for] the affairs thereof shall be wound up, and the assets and liabilities dealt with in manner provided by the Partnership Act, 1890 (*m*); PROVIDED that the goodwill of the partnership shall not be sold, but shall be divided between the partners.

25. In case either partner shall, during the continuance of the partnership, either die, become bankrupt, or determine the partnership by notice under clause 3 hereof, the other partner shall have the option of purchasing the share of the outgoing partner so dying, become bankrupt, or giving such notice as from the date of dissolution, such option to be exercised by giving to the outgoing partner, or his representatives, notice in writing of his intention in that behalf within —— calendar months from the date of dissolution, and the purchase-money shall be the fair value of such share upon an account and statement to be taken and made of his share of the capital and effects of the partnership, and of unpaid profits and interest due to him up to dissolution; and for this purpose a proper valuation of assets (including goodwill) shall be made, but so that the goodwill shall be valued at —— times the average net profits of the business during the —— preceding years, or from the commencement of the partnership if less than that time. [PROVIDED that the profits derived by the outgoing partner from any office of profit or appointment shall not, for the purpose of ascertaining such value, be reckoned as profits of the business.] The purchase-money, when ascertained, shall be paid to the outgoing partner, or his representative, by —— equal instalments, at intervals of —— calendar months, with interest at —— per cent. per annum on the amount for the time being unpaid, the first of such instalments to be paid at the end of —— calendar months from the date of dissolution. Such purchase-money to be secured by bond or by a floating charge on the assets of the business, and all acts and assurances necessary for vesting in the surviving or continuing partner the assets (including the goodwill) of the partnership, shall be done and executed by the outgoing partner or his representatives.

(*m*) See P. A. 1890, ss. 39, 44; *Garner v. Murray*, [1904] 1 Ch. 57.

26. In case of the dissolution of the partnership by effluxion of time, the deeds, drafts of deeds, and other documents and papers in the custody of the said parties respectively as such partners as aforesaid, shall be divided between them in manner following (that is to say): The papers relating to the business of persons who were clients of either of the partners before the formation of the partnership, shall (unless the contrary be expressly directed by such clients) be committed to the custody of the partner whose clients such persons formerly were; and with respect to the papers relating to the business of clients not included in this class, the same shall be equally divided between the partners (n): AND in case any dispute shall arise as to the custody of the papers in any particular business, it shall be referred to the client, to whose business they relate, to determine to which of the partners the said papers shall be delivered. PROVIDED, nevertheless, that nothing herein contained shall prejudice or affect any lien which the said parties may have, either on the partnership account or otherwise, on any deeds or writings in their respective hands or custody.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Provision as
to the custody
of the papers
belonging to
the firm.

Disputes re-
specting them
to be referred
to client.

27. If either partner shall exercise the option of purchase given by clause 25 hereof in any of the events mentioned in that clause, then, upon the dissolution of the partnership, all deeds, drafts of deeds, and other papers belonging to clients or otherwise, which shall be in the custody of the said partners, or either of them, on account of the partnership, at the time of such dissolution, shall (subject to the claims of the persons, if any, to whom they may happen to belong) remain in the hands of or be delivered to the purchasing partner (o).

Custody of
books and
papers, &c.
in case of pur-
chase under
clause 25.

(n) Or, "shall belong to the partner who shall usually have attended to the business of such clients."

(o) In preparing articles of partnership between solicitors, provision should always be made, in the event of a dissolution, for the destination of the papers in the possession of the firm; this being a point of considerable importance where the dissolving partners intend to practise separately, because, *cæteris paribus*, clients generally resort to the partner who has the custody of their papers. See, as to the right to custody of the deeds and papers, *Ex parte Horsfall*, 7 B. & C. 528; *Doe v. Strode* v. *Seaton*, 2 A. & E. 171; *Davidson v. Napier*, 1 S. & St. 97; *Whittaker v. Howe*, 3 Beav. 383.

As to the
custody of
drafts and
other papers.

Solicitors dissolving partnership frequently agree to divide the business pending in the office; but such an arrangement is void against the clients,

Division of
business on
dissolution.

IV. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO
SOLICITORS.

Notices.
Arbitration
clause.

28. All notices authorised or required to be given to either partner hereunder shall be deemed to be duly served if deposited, addressed to such partner, at the office of the firm.

29. Save as is herein otherwise provided, if at any time any dispute, &c. [*continue ut ante, Precedent I., clause 23, p. 231.*]

IN WITNESS, &c.

[SCHEDULE ABOVE REFERRED TO.]

V. ARTICLES of PARTNERSHIP between TWO MEDICAL MEN.

THIS DEED OF PARTNERSHIP (*p*), made the — day of —, BETWEEN [A. B.], of the one part, and [C. D.], of, &c., of the other part.

Parties.

Recitals:
that partner
has practised
as surgeon.

WHEREAS the said [A. B.] has for some years past carried on the business [*or, profession*] of surgeon and general medical practitioner at the [consulting room] surgery now occupied by him as [tenant from year to year] [*or, as the case may be*] in — Street [*or, the premises known as, &c.*], in the parish of — aforesaid.

Agreement to
admit into
partnership.

AND WHEREAS the said [A. B.] has agreed to admit the said [C. D.] into partnership with him in the said business [*or, profession*] for the consideration, upon the terms and conditions, for the period, and under and subject to the provisions hereinafter expressed.

Testatum.
Mutual
covenants.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £— now paid by the said [C. D.] to the said [A. B.] by way of premium, the receipt whereof the said [A. B.] hereby acknowledges, the

who, having employed both, have a right, under such retainer, to the benefit of their joint exertions.

Goodwill.

It would seem that in the case of an ordinary solicitor's business nothing of the nature of goodwill can be taken into account as part of the partnership assets: *Arundell v. Bell*, 49 L. T. 345; *S. C.*, 31 W. R. 477.

As to right to use name of old firm, see *Burchell v. Wilde*, [1900] 1 Ch. 551.

As to whether a solicitor who has acted for a client can appear in an action brought by the client on behalf of the opposite side: see *Rakusen v. Ellis, Mundy and Clarke*, [1912] 1 Ch. 831.

(*p*) For stamp, see Preliminary Note, *ante*, p. 225.

said [A. B.] and [C. D.] hereby mutually covenant and agree as follows:—

V. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO MEDICAL
MEN.

1. The said [A. B.] and [C. D.] will become and continue partners in the business [*or, profession*] of surgeons and general medical practitioners for the term of — years [*or, for the period of*], commencing from the — day of — last, if both of them shall so long live, but subject to be determined as hereinafter provided.

To be parties
for a term
determinable.

2. [*Registration of firm under the Registration of Business Names Act, 1916, and exhibiting certificate, &c., Precedent IV., clause 2, ante, p. 253 (q).*]

3. The business [*or, profession*] of the partnership shall be carried on under the style or firm name of “[A. B.] and [C. D.]” [*or, as the case may be*], at the consulting room or surgery now occupied by the said [A. B.] as aforesaid, or at such other consulting room or surgery, as shall be agreed upon by the partners. The said [A. B.] and [C. D.], or either of them, shall have access at all times to the said consulting room or surgery for the purposes of the business [*or, profession*] of the partnership.

Business to be
carried on at
place agreed
upon.

Parties to
have access
at all times.

4. The capital of the partnership shall be the sum of £—, to be contributed as to £— being [three-fourths] thereof by the said [A. B.], and as to £— being the remaining [fourth] thereof by the said [C. D.]; AND the said sums of £— and £— shall be credited in the books of the firm as belonging to the partners contributing the same respectively, and the amount of capital so credited to each partner shall carry interest at the rate of — per cent. per annum from the date hereof, payable half-yearly, as part of the outgoings of the business [*or, profession*] before division of profits.

Capital.

5. All the medical and surgical books and instruments and implements of pharmacy belonging to the said [A. B.], and the fixtures in the said surgery, and all the surgical instruments and electrical and other requisites and plant for radiography and electrical treatment, and all drugs, medicines [glass] bottles, and other glass now belonging to the said [A. B.], and provided by him for the purposes of his said business [*or, profession*], shall become the joint property of the partnership, and shall be taken over at the sum of £— as part of the capital to be con-

Medical
books, fix-
tures, surgical
instruments,
drugs, bottles,
&c., to
become joint
property.

(q) See note (g), ante, p. 253.

V. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO MEDICAL
MEN.

tributed by the said [A. B.]. The balance of the capital to be contributed by the said [A. B.], and the capital to be contributed by the said [C. D.], shall be paid by the said [A. B.] and [C. D.] respectively into the — Bank to the credit of the firm within — days from the date of these articles.

Shares of
partners in
profits.

6. The partners shall be interested in the net gains and profits of the said business [*or*, profession] in the shares and proportions following, that is to say, the said [A. B.] in [three-fourths] thereof, and the said [C. D.] in [one-fourth] thereof.

Salaries, &c.,
to be treated
as partnership
profits.

7. The salaries and remunerations of the several appointments of — and — now held by the said [A. B.], and of all other appointments which may be held by the partners, or either of them, and all pecuniary presents, gratuities from patients, fees, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the partners, or either of them, shall be treated as gains and profits of the business of the partnership, and accounted for accordingly.

One partner
to reside at
surgery.

8. One of the partners shall always reside on the premises where the consulting room or surgery at which the business [*or*, profession] of the said partnership shall for the time being be carried on are situated, and the said [A. B.] shall at all times have the option of being such resident partner; and the partner who for the time being shall not be resident, shall at all times reside within [one] mile[s] from the said premises aforesaid, and shall be allowed out of the funds of the partnership the monthly sum of £— for the purpose of providing him with a proper residence [*or*, towards his expenses in renting other premises or taking furnished apartments], and reasonable travelling facilities for his daily attendance at the premises where such consulting room or surgery may be.

Allowances to
non-resident
partner for a
residence and
travelling
expenses.

9. The — Bank at —, or such other bankers as the partners shall jointly approve, shall be the bankers of the partnership.

Bankers.

Rent, &c.,
allowance,
and expenses
to be paid out
of profits.

Losses to be
borne by
partners in
proportion
to share of
profits.

10. The rent and also the rates and taxes of the consulting room or surgery at which the said business [*or*, profession] shall for the time being be carried on, and all expenses of repairs and insurance, and other outgoings relating thereto, and the said monthly allowance of £— to the partner who for the time being shall not reside therein, and all expenses of providing drugs, medicines, surgical and electrical instruments and requisites and

plant, medical books and journals, and all other articles required for the purposes of the business [*or*, profession] of the partnership, and of making good all damages to or deterioration in the said drugs, medicines, medical and surgical books and instruments as aforesaid, fixtures, and bottles, and all salaries and expenses of assistants, dispensers, messengers, and servants connected with the said business, and all other expenses and outgoings whatsoever in anywise relating to the business [*or*, profession] of the partnership shall, in balancing the accounts of the firm, be charged against revenue, and losses shall be borne by the partners in the shares in which they are entitled to the net profits of the said business.

[10A. The consent of both the said [A. B.] and [C. D.] shall be required for the discharge or engagement of any servant, dispenser, or assistant employed for partnership purposes, and no partner shall take an indoor patient or a pupil without his co-partner's consent. Any premiums received by either the said [A. B.] or [C. D.] in respect of any pupil or payments from any indoor patient shall form part of the partnership property.]

11. Proper books of accounts shall be kept by the partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and all other matters and things as are usually entered in similar books of accounts, including all receipts in respect of the salaries of the several appointments so held by the said [A. B.] as aforesaid, and of any future salaries for appointments which may be held by either of the said partners, and of pecuniary presents and gratuities from patients, and of all other fees and professional emoluments whatsoever [whether from pupils or otherwise]. Such books of accounts, with all securities, letters, and writings which may concern the partnership shall be kept at the premises at which the said business [*or*, profession] shall for the time being be carried on, and each of the partners shall have free access to inspect and examine the same; and take copies and extracts therefrom.

Accounts to
be kept, and
proper entries
made.

Account books
to be kept on
partnership
premises, each
partner to
have access.

12. On every — day of — and — day of — during the continuance of the partnership (beginning with the — day of — next) a general account in writing shall be made and taken by the partners of all the moneys, credits, property, and effects, and of all debts and liabilities of the partnership, and such account shall be entered in two books and signed in each book by each of the partners; and after such signature each of the partners

To take
half-yearly
account.

V. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO MEDICAL
MEN.

To divide
the profits
equally;
and draw out
in advance.

Partners
to employ
themselves
diligently.

To be just
and faithful.

Not to employ
partnership
funds except
for partner-
ship purposes.

To pay
private debts.

shall take one of the said books, and they shall both be bound by every account so signed, except that if any manifest error be found therein within —— calendar months after such signature thereof as aforesaid, such error shall be rectified.

13. Upon such signature as aforesaid of every general account the net gains and profits of the partnership business [*or*, profession] appearing thereby, after providing for such outgoings and expenses as aforesaid, shall be divided equally between the partners; but each of the partners shall be entitled to draw out in advance on the last day of every calendar month the monthly sum of £——, yet so that if upon taking any general account it shall appear that the amount of such monthly sums drawn out by each or either of the partners during the preceding half-year exceeds the amount of his share in the net profits appearing by such accounts, the amount of such excess shall be forthwith repaid by him to the accounts of the partnership, and that until such repayment he shall not be entitled to draw out or receive any further sum.

14. Each of the partners shall employ himself diligently in the business [*or*, profession] of the partnership, and use his utmost endeavour to promote the interest thereof.

15. The partners shall be just and faithful to each other, and furnish to each other, when required, full accounts in writing of all matters and transactions relating to the partnership.

16. Neither of the partners shall, without the previous consent in writing of the other of them, employ any moneys, property, or effects belonging to the partnership, or engage the credit thereof, except upon the account and for the benefit of the partnership; or enter into any bond, or draw, indorse, or accept any bill of exchange, promissory note, or other negotiable instrument, or become bail, surety, or security for any person or persons whomsoever [*or*, a corporation], or subscribe any policy of insurance, or do or knowingly suffer to be done any act or thing whereby or by reason whereof the property or effects of the partnership, or any part thereof, may be attached or taken in execution, or lend any money of the partnership, or otherwise give credit to any person or persons whom the other of them shall, by notice in writing, have forbidden him to trust.

17. Each of the partners shall punctually pay and satisfy all his present and future private debts and engagements, and in-

demnify the other of them, or his personal representatives, and the property and effects of the partnership therefrom, and from all actions, suits, claims, demands, damages, and expenses on account thereof.

V. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO MEDICAL
MEN.

18. It shall be lawful for either of the partners to dissolve the partnership before the expiration of the said term of — years, by giving to the other of them, or leaving for him at his usual or last known place of residence in England, or at the house at which the said business [*or, profession*] shall for the time being be carried on, — calendar months' notice in writing of such dissolution.

Either partner
may dissolve
partnership
on notice.

19. If the said [C. D.] shall be the partner giving such notice, he shall not at any time thereafter, either alone or in partnership, carry on or be engaged, directly or indirectly, in the business or practice of a surgeon or general medical practitioner, or otherwise practise medicine or surgery in — aforesaid, or within — miles from the Town Hall thereof, and in case of his so doing he shall thereupon pay to the said [A. B.], or his personal representatives, the sum of £——, which sum, or so much thereof as shall not be so paid, shall be recoverable by the said [A. B.], or his personal representatives, as and for ascertained and liquidated damages, and not as in the nature of a penalty.

Proviso that if
partnership is
dissolved,
[C. D.] shall
not carry on
business
within —
miles of other.

20. Upon the dissolution of the partnership, either by the expiration of the said term of — years, or otherwise, a general valuation and account of the assets, and liabilities and transactions of the partnership, shall be made and taken, &c. [*continue provision for dissolution and winding-up of the partnership as in Precedent II., clause 25, ante, p. 243.*]

Final account
and division
to be made on
determina-
tion ;

21. [*Option to continuing partner to purchase share of outgoing partner as in Precedent IV., clause 25, ante, p. 258.*]

but either .
partner may
take the share
of the other
at a valuation.

22. In the event of the determination of the partnership upon any notice for the dissolution thereof on the part of the said [C. D.], then, unless under the provisions hereinbefore contained, the share of the said [A. B.] in the property and effects of the said partnership shall be taken at a valuation by the said [C. D.], and he shall thereby become entitled to the whole of the said business [*or, profession*], he the said [C. D.] shall give to the said [A. B.] his bond in a sufficient penalty for securing the payment of the sum of £—— as and for liquidated damages, in case the said [C. D.] shall at any time thereafter, either alone or in

Bond against
practising
within —
miles of other
partner to be
given by
[C. D.] on
dissolution,
on notice
given by him.

V. ARTICLES
OF PARTNER-
SHIP BETWEEN
TWO MEDICAL
MEN.

partnership, carry on or be engaged in, directly or indirectly, the business [or, profession] of a surgeon or general medical practitioner, or otherwise practise either surgery or medicine in — aforesaid, or within — miles from the Town Hall thereof.

Arbitration
clause.

23. [*Arbitration clause, as in Precedent I., clause 23, ante, p. 231.*]

IN WITNESS, &c.

VI. ARTICLES of PARTNERSHIP on the ADMISSION of a SON of a PARTNER into the FIRM, pursuant to a PROVISION contained in the ORIGINAL ARTICLES of PARTNERSHIP. (*By SUPPLEMENTAL DEED.*) (*r*).

Parties.

THIS DEED OF PARTNERSHIP (*s*), made the — day of —, 19—, BETWEEN [A. B.], of, &c., of the first part; [C. D.], of, &c., of the second part; [E. F.], of, &c., of the third part; and [G. B.], of, &c., a son of the said [A. B.], of the fourth part; AND supplemental to certain articles of partnership (hereinafter called “the articles”), dated the — day of —, 19—, whereby the said [A. B.], [C. D.], and [E. F.], agreed that they would become and continue partners in the trade or business of —, at — aforesaid, for the term of — years from the date of the articles, under the style or firm of [B.] and Company.

Recitals:
of title of
partners to
shares;

AND WHEREAS the said [A. B.], [C. D.], and [E. F.], have from the date of the articles up to the present time carried on the said business pursuant to the articles, and they are now respectively entitled to the capital (amounting as appears by the books of the firm to the sum of £—) and the assets and profits of the partnership in the shares and proportions following, that is to say, the said [A. B.] to [six equal tenth] shares thereof, the said [C. D.] to [three equal tenth] shares thereof, and the said [E. F.] to the remaining [one equal tenth] share thereof.

Stamp.

(*r*) For provisions in partnership deed for admission of sons, see Precedent II., clause 22, *ante*, p. 240.

(*s*) Stamp, 10s., as a partnership deed, and a further *ad valorem* stamp, as on a disposition *inter vivos*, in respect of the assignment: see Preliminary Note, *ante*, pp. 225, 226. The stamp should be adjudicated.

AND WHEREAS the said [A. B.] is desirous of introducing, pursuant to the provision in this behalf contained in the articles, the said [G. B.] as a partner into the said firm for the unexpired residue of the said term, and to assign to him [one equal sixth] part of the shares and interest of him the said [A. B.] in the partnership, subject to the covenants, stipulations, and provisions herein contained.

VI. ARTICLES
OF ACCESSION
BY SUPPLE-
MENTAL DEED.

of desire of
partner to
introduce his
son into firm.

NOW THIS DEED WITNESSETH as follows:—

Testatum.

1. In pursuance of the provision in this behalf contained in the said articles, the said [A. B.], with the consent of the said [C. D.] and [E. F.], testified by their executing these presents, hereby introduces the said [G. B.] as a partner into the said firm upon the terms and subject to the covenants, stipulations, and provisions hereinafter contained; And the said [A. B.] hereby assigns unto the said [G. B.] [one equal sixth] part of the share and interest of him the said [A. B.] of and in the capital, stock-in-trade, goodwill, moneys, credits, and effects of the partnership, and in the profits henceforth to arise from the said business, To HOLD the same unto the said [G. B.] absolutely, subject as hereinafter mentioned.

Introduction
of son as a
partner.

2. In consideration of the premises, the said [A. B.], [C. D.], [E. F.], and [G. B.] hereby mutually covenant and agree as follows, that is to say:—

Mutual
covenants to
carry on
partnership
as altered by
introduction
of son.

(1) They the said [A. B.], [C. D.], [E. F.], and [G. B.] shall, as from the date of these presents, be and continue partners in the said trade or business of — for the unexpired residue of the said term of — years, upon the terms and subject to the covenants, stipulations, and provisions contained in the articles, so far as applicable, and with such variations only as are rendered necessary by the introduction of the said [G. B.] as a partner, and the assignment to him of [one equal sixth] part of the share of the said [A. B.] as aforesaid; AND will observe and perform all such last-mentioned covenants, stipulations, and provisions, with such variations as aforesaid, in the same manner as if the said [G. B.] had originally been a party to the articles, and the covenants, stipulations, and provisions herein contained had been originally contained in the articles.

(2) If at any time a change should be made or occur in the particulars already furnished to the Registrar under and by virtue

Registration
under the
Registration

VI. ARTICLES
OF ACCESSION
BY SUPPLE-
MENTAL DEED.

of Business
Names Act,
1916.

of the Registration of Business Names Act, 1916, or by reason of the said [G. B.] being admitted into the firm, necessary to furnish for registration purposes under the said Act, a statement specifying the date and nature of the change, to be signed by all the partners, shall be furnished to the Registrar in pursuance of sect. 6 thereof (t).

(3), (4), (5), &c. [*Here insert, in successive paragraphs, any necessary variations as to capital, profits, weekly drawings, or other special provisions with regard to [G. B.], or his share in the partnership (u).*]

Certificate of
registration.

(6) The firm shall keep the certificate of registration exhibited in a conspicuous position at their registered business address in pursuance of sect. 11 of the Registration of Business Names Act, 1916, and they shall duly comply with all the requirements of sect. 18 of the same Act].

IN WITNESS, &c.

VII. DEED POLL *for* EXTENDING *the* TERM *of a* PARTNER-
SHIP *to be* INDORSED *upon or* APPENDED *to the* ARTICLES
of PARTNERSHIP; VARIATIONS *where the original*
ARTICLES *are* ALTERED.

Commence-
ment.

Recital:
of expiration
of partnership
term and
agreement
to continue
partners.

TO ALL TO WHOM THESE PRESENTS SHALL COME (x), the within named [*or, above named*] [A. B.], [C. D.], and [E. F.] send greeting: WHEREAS the term of [seven] years by the within written [*or, above written*] deed fixed for the continuance of the partnership thereby agreed to be entered into will expire on the — day of — next: But the said parties have agreed to continue the partnership for the further period of [seven] years,

(t) See the Registration of Business Names Act, 1916, ss. 3 (1) (d) and 6.

Provision as
to estate duty.

(u) The father may die within three years after the assignment of a part of his share to the son, in which case, if the assignment is voluntary, estate duty would be payable on the father's death. To meet this contingency, a provision may be added enabling the son to charge the share assigned to him with the amount of the duty payable in respect thereof, together with interest at such rate as the son thinks proper; or, if so intended, the father may covenant with the son that in that event, if the son still remains a partner, the father's executors, &c. will pay to the son the amount of any such duty.

Stamp.

(x) Stamp, 10s.

upon the same terms and conditions as are within [above] expressed concerning the said partnership thereby created (*y*): NOW THIS DEED WITNESSETH that each of them the said [A. B.], [C. D.], and [E. F.] doth hereby covenant with the others of them, jointly and severally, in manner following (that is to say): That they the said [A. B.], [C. D.], and [E. F.], and the survivors of them, will continue partners together in the said trade or business for the further term of [seven] years to be computed from the said — day of — next, if they or any two of them shall so long live, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisoes, and agreements [except and subject as herein-after mentioned] as are within [*or*, above] expressed and contained, of and concerning the within mentioned [*or*, above mentioned] partnership, in like manner as if the within written [*or*, above written] deed, and the partnership thereby created, and the several covenants, declarations, provisoes, and agreements therein contained [subject as hereinafter mentioned] had been made or entered into for the term of [fourteen] years instead of the term of [seven] years (*z*).

IN WITNESS, &c.

VII. DEED
POLL FOR
EXTENDING
TERM OF
PARTNERSHIP.

Testatum.

Mutual covenants to continue partnership and perform covenants, &c., as within.

(*y*) If any of the provisions are to be altered, add—
“except in respect of the particulars hereinafter mentioned.”

(*z*) Add, if so intended, any modifications of the original terms of partnership, *e.g.*—

“PROVIDED ALWAYS, and it is hereby agreed that the power of determining the partnership at any time during the continuance thereof, on giving [six] calendar months' previous notice, within limited and reserved to the said [A. B.], shall no longer exist, but be entirely extinguished.”

Or, “that the said [A. B.] shall not henceforth be required to, and shall not interfere in the carrying on, management, or conduct of the business of the partnership, according to the covenant in that behalf contained in the within written [*or*, above written] deed, and shall not sign the name of the firm to any cheques, bills, or other writings; nor, without the consent of the said [C. D.] and [E. F.], employ any of the money or effects of the partnership, nor in any way pledge the credit thereof” (*or otherwise, as the case may be*).

Variation where new terms are added.

Extinction of power to determine partnership on notice.

Sleeping partner.

VIII.
TRANSFER OF
MOIETY OF
SHARE.

VIII. DEED of ASSIGNMENT (INDORSED on or ANNEXED to ARTICLES of PARTNERSHIP) by ONE PARTNER, with the CONSENT of the OTHERS, of a MOIETY of his SHARE to a THIRD PERSON, who is ADMITTED into the PARTNERSHIP. MUTUAL COVENANT by the OLD PARTNERS and NEW PARTNER to PERFORM the ARTICLES.

Parties.

THIS DEED (a), made the —— day of ——, 19—, BETWEEN the within named [*or*, above named] [A. B.], of the first part; the within named [*or*, above named] [C. D.] and [E. F.], of the second part; and [G. H.], of, &c., of the third part:

Recitals:
of existing
partnership;

WHEREAS the said [A. B.], [C. D.], and [E. F.], from the date of the within written [*or*, above written] deed down to the present time, have carried on the profession or business of solicitors in partnership, pursuant to the provisions of the within

of agreement
for transfer.

written [*or*, above written] deed: AND WHEREAS the said [A. B.], with the privity and consent of the said [C. D.] and [E. F.], has contracted with the said [G. H.] for the absolute sale to him of one moiety of his, the said [A. B.'s], [one-third] share of and in the goodwill, capital, property, and effects of the said partnership at the price of £——; AND it has been agreed that such moiety shall be assigned to and vested in the said [G. H.] in manner hereinafter expressed; and that the said several parties hereto shall enter into the covenants herein-after contained. NOW THIS DEED WITNESSETH as follows:—

Testatum.

Assignment
of a moiety of
share to new
partner.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [G. H.] to the said [A. B.] (the receipt whereof is hereby acknowledged), the said [A. B.] (with the privity and consent of the said [C. D.] and [E. F.] hereby testified), as beneficial owner, assigns unto the said [G. H.] ALL THAT one undivided moiety or equal half part of the [one-third] part or share of him, the said [A. B.], of and in the goodwill of the said partnership business, and the profits henceforth to arise therefrom, and of and in the capital, property, and

Stamp.

(a) Stamp, *ad valorem*, as a conveyance by way of sale, in respect of the price of the share assigned, and additional stamp of 10s.: see *ante*, p. 226.

effects of the said partnership; To HOLD the same unto the said [G. H.] absolutely.

VIII.
TRANSFER OF
MOIETY OF
SHARE.

2. In further pursuance of the said agreement, and in consideration of the premises, they, the said [C. D.] and [E. F.], at the request of the said [A. B.], hereby admit the said [G. H.] into the said partnership established by the within written [*or, above written*] deed, as an acting partner therein, in respect of the one moiety hereby assigned of the [one-third] share of the said [A. B.] in the said partnership business as aforesaid.

Admittance
of new
partner.

3. Each of them, the said [A. B.], [C. D.], [E. F.], and [G. H.], hereby covenants with the others and each of them, that they, the said [A. B.], [C. D.], [E. F.], and [G. H.], will henceforth become and continue partners in the profession or business of solicitors, for all the residue now unexpired of the said term of — years mentioned in the within written [*or, above written*] deed, under and subject to the provisions and stipulations contained in the said deed, and will at all times hereafter faithfully perform and observe all and every the covenants, provisoes, and agreements contained in the said deed, so far as having regard to these presents the same are now subsisting and capable of taking effect; AND that the several rights, shares, and interests of the said respective parties, of and in the partnership property, profits, and effects, held and enjoyed by the said parties respectively, under and by virtue of the within written [*or, above written*] deed, and of these presents, or either of them, shall be subject and liable to the provisions of the said deed, as fully and effectually, to all intents and purposes, as if the same had been incorporated with and inserted in these presents, with such modifications and variations therein as might be rendered necessary by the admission of the said [G. H.] into the partnership as aforesaid.

Mutual
covenants
between
partners.

IN WITNESS, &c.

IX.
ADMISSION OF
NEW PARTNER
WITH ADDI-
TIONAL
CAPITAL.

IX. MEMORANDUM of AGREEMENT on Admission into
a FIRM of a NEW PARTNER who brings in ADDITIONAL
CAPITAL (to be ANNEXED to the ARTICLES) (b).

Parties.

MEMORANDUM OF AGREEMENT (c), made the — day
of —, 19—, BETWEEN the above named [A. B.] and [C. D.],
of the one part; and [E. F.], of, &c., of the other part: WHEREBY,
in consideration of the sum of £—, now brought in and con-
tributed by the said [E. F.] as additional capital of the above
mentioned partnership, it is hereby agreed as follows:—

Agreement
for partner-
ship.

1. The parties hereto shall, as from the date hereof, be and
continue partners for the unexpired residue of the above men-
tioned term, subject in all respects to the conditions, stipulations,
and provisions of the above written articles, so far as applicable,
and except as varied by this present agreement.

Capital.

2. The capital of the partnership shall be deemed to be the
sum of £—, and to have been contributed by the parties hereto
in the shares and proportions following, that is to say, two equal
fifth shares by the said [A. B.], two other equal fifth shares by the
said [C. D.], and the remaining one equal fifth share by the
said [E. F.].

Profits and
losses.

3. The profits and losses shall belong to and be borne by the
parties hereto in proportion to their respective shares.

Monthly
drawings.

4. The said [A. B.] and [C. D.] may draw out of the profits
the sums mentioned in the above written articles; and the said
[E. F.] may draw out of the profits any sum or sums not exceed-
ing £— in each month.

5. [*Add any restriction as to the rights and powers of the new
partner, or stipulation as to other matters, which may be agreed
upon.*]

As WITNESS, &c.

(b) This form may be adopted in simple cases where the articles of
partnership are not under seal.

Stamp.

(c) Stamp, 6d.

X. DEED of DISSOLUTION of PARTNERSHIP *between Two, where ONE PARTNER pays to the other a SUM of MONEY in lieu of his SHARE of the STOCK in TRADE, &c.* ASSIGNMENT of SHARE. MUTUAL RELEASE, and ORDINARY COVENANTS. COVENANT *by* RETIRING PARTNER NOT to EXERCISE *the same* TRADE, &c. (d).

X. DEED OF DISSOLUTION, WITH ORDINARY CLAUSES.

THIS DEED OF DISSOLUTION (e) OF PARTNERSHIP, made the — day of —, BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., of the other part: WHEREAS the said [A. B.] and [C. D.] have for some time carried on the trade or business of — in partnership, by virtue of articles of partnership, dated, &c., whereby it was provided [*recite material provisions*] [*or*, “and are interested therein in equal shares, but the said partnership is not regulated by any articles or agreement in writing”].

Parties.
Recitals:
of partnership
by parol;

AND WHEREAS the said [A. B.] and [C. D.] have agreed to dissolve the said partnership as from the day of the date hereof, and a notice of such dissolution has been signed by the said [A. B.] and [C. D.], to be published in the *London Gazette* (f).

of agreement
for dissolution;

(d) As to the effect of a dissolution between an English and alien company trading in partnership brought about by war, see *Stevenson (Hugh) and Sons v. Aktiengesellschaft Für Cartonnagen-Industrie*, [1918] A. C. 239.

(e) It seems clear that this deed is chargeable with a 10s. stamp, and also with an *ad valorem* duty as a conveyance on sale, in respect of the sum paid as the price of the outgoing partner's share (see *Potter v. I. R. Commissioners*, 23 L. J. Ex. 345; *Christie v. I. R. Commissioners*, 4 H. & C. 664; L. R. 2 Ex. 46; *Phillips v. I. R. Commissioners*, *ibid.* 399; *Garnett v. I. R. Commissioners*, 48 W. R. 303); and, possibly, also on the share of the outgoing partner in the debts of the firm taken over by the continuing partner: see Stamp Act, 1891, s. 57; and *Ulverstone, &c. Rly. Co. v. I. R. Commissioners*, 2 H. & C. 855. Where the amount so chargeable would be considerable, the liability may be avoided altogether, or partially, by dispensing with a formal assignment of the partnership property and assets (except as regards land or houses, fixtures, goodwill, and other matters which can only pass by assignment), and taking merely an acknowledgment as in Precedent XII., *post*, p. 282; see K. & E. 11th ed. vol. ii. p. 473, note (d); Lindley on Partnership, 9th ed. 548. As to adding a further stamp for a nominal sum in respect of the covenant for indemnity, see K. & E. *ibid.* p. 475, note (a).

Stamp.

(f) See Partnership Act, 1890, s. 36 (2), and Limited Partnerships

X. DEED OF
DISSOLUTION,
WITH
ORDINARY
CLAUSES.

of agreement
for continu-
ance of busi-
ness by one
of the part-
ners;
of final
amount and
valuation;

of agreement
as to mode of
payment of
purchase-
money;

of bond to
secure pay-
ment of pur-
chase-money
by instal-
ments (h).

Dissolution of
partnership.

Mutual
release.

AND WHEREAS upon the treaty for the said dissolution of partnership, it was agreed that the said [C. D.] (who intends to carry on the said trade or business alone), should take over all the share of him, the said [A. B.], in the assets and goodwill of the said partnership, and that such share should be assigned to the said [C. D.] accordingly, on his taking upon himself all the debts and liabilities of the partnership which were outstanding on the — day of —, and paying to the said [A. B.] the sum of £— for his share of such of the partnership assets as consist of cash in hand and at the bank, negotiable instruments, and movable chattels, and £— for his share of the goodwill and the residue of the assets (g), making together the sum of £—.

AND WHEREAS it has been agreed that the said sum of £— shall be paid to the said [A. B.] by three equal instalments of £— each, the first to be paid on the — day of — next ensuing, the second on the — day of — then next following, and the third and last on the — day of —, 19—, with interest on the amount for the time being unpaid at the rate of — per cent. per annum, to be secured by the joint and several bond of the said [C. D.], and of [surety] as his surety.

AND WHEREAS, in pursuance of the said agreement, the said [C. D.] and [surety], as his surety, have by their bond, bearing even date with these presents, become bound unto the said [A. B.] in the penal sum of £—, for the payment by the said [C. D.] or [surety], or either of them, unto the said [A. B.], of the said sum of £—, by such instalments and with such interest as aforesaid.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement in this behalf, it is hereby agreed and declared as follows:—

1. The said [A. B.] and [C. D.] hereby declare that the said partnership shall be determined, and stand dissolved as from the day of the date hereof [and that as from that date the articles of partnership hereinbefore mentioned, and all clauses and provisions therein contained, shall absolutely cease and be void].

2. Each of them, the said [A. B.] and [C. D.], hereby releases and discharges the other of them from all actions, proceedings,

Act, 1907, s. 10, as to effect of notices in the Gazette. See also sect. 37 of the P. Act, 1890, as to the power to compel notification.

(g) See note (e), p. 273.

(h) See Precedent XIV., *post*, p. 284.

X. DEED OF
DISSOLUTION,
WITH
ORDINARY
CLAUSES.

claims, and demands, which either of them the said parties now has, or hereafter might have had, against the other of them, by reason of the said partnership, or of any thing in relation thereto; but so, nevertheless, as not to prejudice or affect the covenants or provisions herein contained, or the rights and remedies of the parties hereto respectively.

3. In consideration of the sum of £—, being the apportioned part of the said sum of £—, the payment whereof in manner hereinbefore mentioned, is so secured as aforesaid, the said [A. B.], as beneficial owner, hereby assigns and transfers unto the said [C. D.], ALL the moiety or one half part of him, the said [A. B.], of and in all and singular the goodwill and assets of the said partnership other than cash in hand, and at the bank negotiable instruments and movable chattels: To HOLD the same unto the said [C. D.] absolutely.

Assignment
of share.

Habendum.

4. For the consideration aforesaid, and for the more effectually enabling the said [C. D.] to receive and recover and obtain the benefit of the said several assets and effects hereby assigned, he the said [A. B.] hereby irrevocably (*i*) appoints the said [C. D.], his lawful attorney and attorneys, in the joint names of the said [A. B.] and [C. D.], or otherwise, but for the exclusive benefit, and at the cost and risk of the said [C. D.], to demand, call in, and receive from all persons whom it may concern, all and singular the credits, moneys, and effects of the said partnership, and to give effectual receipts and discharges for the same respectively, to indorse and sign bills of exchange and other negotiable instruments, and to use all such remedies or proceedings for recovering and getting in the said credits and effects respectively as may be deemed expedient; and for all or any of the purposes aforesaid, from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke; and generally to do whatsoever shall be requisite for giving to the said [C. D.] the full benefit of the assignment hereby made (*k*).

Power of
attorney.

(*i*) See sect. 126 of the L. P. A. 1925 (15 Geo. 5, c. 20).

(*k*) Where the retiring partner assigns his share, it may frequently be advisable to insert a power of attorney, notwithstanding that an assignment of a debt, of which notice in writing has been given to the debtor, passes the right to the debt, and all remedies, and power to give a discharge for the same, without the concurrence of the assignor; for it may prove in some cases difficult to give the required notice: see sect. 136 of the L. P. A. 1925.

X. DEED OF
DISSOLUTION,
WITH
ORDINARY
CLAUSES.

Covenant by
retiring part-
ner that he
has not
contracted
debts, &c.

Nor incum-
bered (*m*).

For further
assurance.

Not to receive
or release
debts.

Covenants by
continuing
partner to
pay debts,
and for
indemnity
(*n*).

5. The said [A. B.] hereby covenants (*l*) with the said [C. D.] in manner following (that is to say), that he, the said [A. B.], has not at any time heretofore contracted any debt or obligation which can or may charge or affect the said [C. D.], or the assets or effects of the said partnership, or any part thereof; nor received or discharged any of the credits of the said partnership, except as appears by the books of the said partnership [nor done any act whereby the share and premises hereby assigned, or any part thereof, may be charged or incumbered in any manner howsoever; AND that he, the said [A. B.], will at all times hereafter, on the request and at the costs of the said [C. D.], make, do, and execute every such further assurance, act, or thing whatsoever, for the more effectually vesting in the said [C. D.] the premises hereby assigned, and every part thereof, and enabling him to receive the same, as shall be reasonably required]; AND that he, the said [A. B.], will not at any time hereafter receive, compound, or discharge any of the goods, credits, or effects, one moiety whereof is intended to be hereby assigned, and will not release, disavow, or become non-suit in any action or proceeding which may be brought by the said [C. D.] by virtue of the said power, or do any other act or thing in derogation of the assignment hereby made, or the powers or authorities hereby given.

6. The said [C. D.] hereby covenants with the said [A. B.] (*nn*) that he the said [C. D.] will, within — calendar months from the date hereof [or, in due course], pay and discharge all the debts and liabilities of the said partnership; AND will at all times hereafter effectually keep indemnified the said [A. B.], and his estate and effects, against all actions, proceedings, costs, damages, expenses, claims, and demands in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or instituted by the said [C. D.] [in the name of the said [A. B.]], by virtue of the power or authority hereinbefore contained, or of any act, matter, or thing in relation thereto.

7. AND in consideration of the premises, he the said [A. B.],

(*l*) See sects. 80 (1) and 82 of the L. P. A. 1925 (15 Geo. 5, c. 20).

(*m*) If the retiring partner assigns his share as "beneficial owner," the covenants against incumbrances, &c. in brackets will be omitted.

(*n*) See *ante*, p. 273, note (*e*).

(*nn*) See sect. 79 of the L. P. A. 1925 (15 Geo. 5, c. 20), and *ibid.* sect. 205 (1) (ix).

hereby covenants with the said [C. D.], that he the said [A. B.] will not at any time within — years from the date of these presents, either alone or jointly with or as agent or manager for any person or persons whomsoever, either directly or indirectly, exercise, carry on, or be concerned or interested in the trade or business of —, or any branch thereof, within the distance of — miles from — aforesaid (o); AND will not nor shall divulge or make known to any person or persons whomsoever any of the secrets, accounts, or transactions of or relating to or concerning the said partnership so heretofore carried on between them, the said [A. B.] and [C. D.], as aforesaid: AND if the said [A. B.] shall do any act in breach of this present covenant, then that he the said [A. B.] shall immediately thereupon pay to the said [C. D.] the sum of £—, as liquidated damages (p).

IN WITNESS, &c.

X. DEED OF
DISSOLUTION,
WITH
ORDINARY
CLAUSES.

Covenant by
[A. B.] not to
exercise the
trade, or dis-
close secrets.

(o) As to what constitutes a breach of this covenant, see *Hadsley v. Dayer-Smith*, [1914] A. C. 979. The distance will be measured "as the crow flies": *Mouflet v. Cole*, 8 Ex. 32. The decisions, which are many, as to what is a reasonable distance vary with the class of trade in question. As to covenants not to carry on business, see *Attwood v. Lamont*, [1920] 3 K. B. 571; *Fitch v. Dewes*, [1921] 2 A. C. 158; and *Lindley*, 9th ed. 531, note (g). See, generally, as to agreements in restraint of trade, *Agreements, Precedent X.*, Vol. I., p. 38, note (g).

(p) Where a person purchases a share in or the entirety of a business from a retiring partner or any other person, it is important that the extent of the obligation, if any, intended to be imposed upon the vendor not to exercise the business should be explicitly defined, as the point occasions much dispute, and it is by no means well settled how far such an obligation is incident to the contract itself: see *Konski v. Peet*, [1915] 1 Ch. 530; *Mason v. Provident Clothing and Supply Co.*, [1913] A. C. 724; *Herbert Morris, Ltd. v. Saxelby*, [1916] 1 A. C. 688; *McEllistram v. Ballymacelligott Co-operative, &c. Soc.*, [1919] A. C. 548—590; and *Lindley, supra*.

As to con-
tracts not to
carry on a
business.

Where it is intended that the vendor of the goodwill of a business shall not be restrained from carrying it on, it is better expressly to negative the implication of any such restriction by such a clause as the following:—"PROVIDED ALWAYS, and it is hereby declared, that nothing herein contained shall extend or be construed to extend to prevent or restrain the said [vendor] from setting up or exercising the trade or business of a — at any place or places, and in any manner that he shall think proper."

Vendor to be
at liberty to
exercise the
trade on his
own account.

XI. DEED OF
DISSOLUTION,
AND
ASSIGNMENT
OF SHARE.

XI. DEED of DISSOLUTION of PARTNERSHIP *between*
THREE, *where* ONE PARTNER *retires and receives a SUM*
of MONEY (secured by the COVENANTS of the CONTINUING
PARTNERS, or on MORTGAGE) in lieu of his SHARE—
ASSIGNMENT of SHARE of PARTNERSHIP ASSETS *other*
than FREEHOLDS and LEASEHOLDS, which are CONVEYED
by SEPARATE DEEDS, and other than MOVABLE PRO-
PERTY (q).

THIS DEED OF DISSOLUTION OF PARTNERSHIP (r),
made the — day of —, 19—, BETWEEN [A. B.], of, &c., of
the one part; and [C. D.], of, &c., and [E. F.], of, &c., of the
other part.

Parties.

Recitals :
of partnership
under articles;

WHEREAS the parties hereto have for some time past carried
on the trade or business of — in partnership, under articles of
partnership dated the — day of —, whereby they are
interested in the partnership property in equal shares.

of nature of
partnership
property ;

AND WHEREAS part of the partnership property consists of the
several freehold and leasehold properties specified in the first and
second parts respectively of the schedule hereto, and of certain
fixed and movable machinery, fixtures, and plant; and the partner-
ship property also includes the moneys, stock-in-trade, materials,
goodwill and effects used in or belonging to, and of debts owing
to the partnership.

of agreement
for dissolu-
tion ;

AND WHEREAS the said parties hereto have agreed to dissolve
the said partnership, so far as relates to the said [A. B.], as from
the — day of — last past, and notice of such dissolution has
been signed by them respectively with a view to its being inserted in
the *London Gazette*; and it has been agreed that the said trade or
business shall as from and after that day be carried on by the
said [C. D.] and [E. F.] in partnership without the said [A. B.];
and that they shall have for their own use and benefit all the
equal third part or share and interest of the said [A. B.] of and
in the said business and the partnership property aforesaid; and
that they the said [C. D.] and [E. F.] shall take upon themselves

(q) It may be advisable that where part of the property of a
partnership consists of lands or buildings, the share of a retiring or
deceased partner in such property should be conveyed or assigned by a
separate deed, so as to keep the fact that it is partnership property off
the title.

(r) As to stamp, see *ante*, p. 273, note (e).

all the debts and liabilities of the partnership which were outstanding on the said — day of —, and shall pay to the said [A. B.] the net value of his share as it stood on that day.

XI. DEED OF
DISSOLUTION,
AND
ASSIGNMENT
OF SHARE.

AND WHEREAS a general account and valuation have been taken and made of the property, assets, and goodwill, and liabilities of the partnership, whereby it appears that the sum of £— is the amount to which the said [A. B.] was entitled, as on the — day of —, in respect of his share of profits and interest, and that the sum of £— is the amount of his share in the capital of the partnership after providing for the liabilities thereof; and he is also entitled to a further sum of £— in respect of interest on his share of capital computed from the said — day of — up to the date of these presents.

of general
account and
valuation ;

AND WHEREAS it has been agreed that the payment of the sum of £— (being the aggregate amount of the said sums of £—, £— and £— to which the said [A. B.] is entitled as aforesaid) by three several instalments of £— each, one of such instalments to be paid on the — day of — next, the second on the — day of —, and the third on the — day of —, with interest thereon at the rate of — per cent. per annum, shall be secured by the joint and several covenants of the said [C. D.] and [E. F.] to be contained in a deed intended to bear even date with and to be executed immediately after these presents (s); and that the said [A. B.] shall assign to the said [C. D.] and [E. F.] all the share and interest of him the said [A. B.] of and in the property, assets, and goodwill of the partnership.

of amount
agreed to be
paid for
retiring
partner's
share ;

[AND WHEREAS for the purposes of stamp duty it has been agreed that the said sum of £— shall be apportioned, and that the sum of £—, part thereof, shall be taken to be the value of

of apportion-
ment of pur-
chase-money
of retiring
partner's
share for
stamp duty
(t) ;

(s) Or, “by a mortgage of the said freehold and leasehold hereditaments and the goodwill and other assets of the business (not being personal chattels within the meaning of the Bills of Sale Acts, 1878 and 1882), which mortgage is intended to bear even date with and to be executed immediately after these presents.”

Or, “by the joint and several bond of the said [C. D.] and [E. F.] intended to bear,” &c.

(t) Where all the partnership assets are conveyed to the continuing partners by the deed of dissolution, this recital will not be required.

XI. DEED OF
DISSOLUTION,
AND
ASSIGNMENT
OF SHARE.

the share of the said [A. B.] in the said freehold and leasehold premises, and that the sum of £—, further part thereof, shall be taken to be the value of his share of such of the assets of the partnership as consist of cash in hand or at the bank, negotiable instruments, and movable chattels; and that the sum of £—, being the residue of the said sum of £—, shall be taken to be the value of the share of the said [A. B.] in the residue of the partnership property, assets, and goodwill.]

of conveyance
of freeholds
and lease-
holds;

AND WHEREAS in pursuance of the said agreement, by a deed bearing even date with, but executed before, and made between the same parties as these presents, ALL THAT the share and interest of the said [A. B.] of and in all the said freehold and leasehold premises mentioned in the first and second parts of the schedule hereto respectively was, in consideration of the sum of £— [*the apportioned sum*], conveyed and assigned by the said [A. B.] to the said [C. D.] and [E. F.], in manner therein mentioned.

of agreement
for indemnity.

AND WHEREAS the said [C. D.] and [E. F.] have also agreed to indemnify the said [A. B.] against the debts and liabilities of the partnership in manner hereinafter mentioned: NOW THIS DEED WITNESSETH as follows:—

Assignment
of the
retiring
partner's
share in the
partnership
property.

1. In consideration of the sum of £—, being the apportioned part so agreed to be paid for the property and assets hereby assigned of the said sum of £— (the payment whereof the said [A. B.] hereby acknowledges to be so secured as aforesaid), he the said [A. B.] hereby assigns and transfers unto the said [C. D.] and [E. F.] ALL THAT the one equal undivided third part or share, and all other the part, share, and interest of him the said [A. B.] of and in all and singular the assets and goodwill of the said partnership, save and except the said freehold and leasehold hereditaments and such of the said assets as consist of cash in hand or at the bank, negotiable instruments and movable chattels: To HOLD the premises hereby assigned unto the said [C. D.] and [E. F.] absolutely.

Habendum.

Power of
attorney.

2. AND for the consideration aforesaid, &c. [*power of attorney, ante, p. 275, mutatis mutandis*].

Covenants by
retiring
partner.

3. AND the said [A. B.] hereby covenants with the said [C. D.] and [E. F.] (*u*) in manner following, that is to say [*covenants by*

(*u*) See sect. 81 of the L. P. A. 1925.

retiring partner that he has not contracted any debts, nor incurred his share; for further assurance; and not to receive or release debts, or to disclose trade secrets, ante, pp. 276, 277, mutatis mutandis (x).

XI. DEED OF
DISSOLUTION,
AND
ASSIGNMENT
OF SHARE.

Joint and
several cove-
nant by con-
tinuing part-
ners to pay
the debts of
the partner-
ship.

4. The said [C. D.] and [E. F.] do hereby jointly and severally covenant with the said [A. B.] (y) that they, the said [C. D.] and [E. F.], or one of them, will, &c. [*covenants by continuing partners to pay and discharge the partnership debts and liabilities, "including the rents and covenants to be paid, observed, and performed respectively in respect of the said leasehold premises, and to indemnify the retiring partner therefrom, ante, p. 276, mutatis mutandis*].

5. Each of them the said [C. D.] and [E. F.] hereby releases and discharges the said [A. B.], and he the said [A. B.] hereby releases and discharges the said [C. D.] and [E. F.], and each of them (but subject and without prejudice to the covenants contained in these presents), from all actions, proceedings, claims, and demands which they the said releasing parties respectively, or either of them, now have or has, or hereafter may have, against the others or other of them, by reason of the above recited partnership, or any other matter or thing relating thereto.

Mutual
release.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

FIRST PART.

[*A short description of the freehold premises.*]

SECOND PART.

[*A short description of leasehold premises, stating rent and length of term, &c.*]

(x) These clauses can easily be adapted for three partners.

(y) See sect. 81 of the L. P. A. 1925.

XII. ACKNOWLEDGMENT BY
RETIRING
PARTNER.

XII. ACKNOWLEDGMENT *by a RETIRING PARTNER or
the REPRESENTATIVES of a DEAD PARTNER of SATISFAC-
TION of his or their CLAIMS against the PARTNERSHIP* (z).

To [B. C.] and [C. D.], of, &c., trading together under the firm name of —.

I, [A. B.], of, &c. [sole executor of the will of [A. B.], deceased], hereby acknowledge the receipt of the sum of £—— paid by you to me in full discharge of all moneys now due and owing to me [or, to the estate of the said [A. B.], deceased] in respect of my [his] share and interest of and in the partnership business of Messrs. —— carried on by me [or, him] with you up to the —— day of —— [or, the day of his death] [under a deed of partnership dated, &c.].

As WITNESS my hand this —— day of ——.

XIII. CONVEYANCE *and* ASSIGNMENT *by an* OUTGOING
PARTNER *to his* CO-PARTNERS *of his* SHARE *in* FREEHOLD
and LEASEHOLD PREMISES *to accompany a* DEED *of*
DISSOLUTION *of* PARTNERSHIP.

Parties.

THIS CONVEYANCE (a), made the —— day of ——, 19—, BETWEEN [A. B.], of, &c., of the one part; and [C. D.], of, &c., and [E. F.], of, &c., of the other part.

Recitals :
of title of
partners to
freeholds and
leaseholds ;

WHEREAS the parties hereto [have carried on the business of —— as partners up to the —— day of —— last, and] are entitled (b) as part of the partnership property, to the freehold premises specified in the first part of the schedule hereto and to the leasehold premises specified in the second part of the same schedule (which said leasehold premises are held for the residue of a term of —— years from the —— day of ——, at the yearly rent of £——, under a lease dated, &c., and made, &c.).

Stamp.

(z) Stamp, twopence, if under hand: and see *ante*, p. 273, note (e).

(a) Stamp, *ad valorem*, as a conveyance on sale, in respect of the amount of the purchase-money apportioned as representing the value of the freehold and leasehold premises. If it is desired to keep the partnership off the title, the words in brackets will be omitted.

(b) See sects. 34 and 36 and Sched. I. Part IV. of the L. P. A. 1925.

[AND WHEREAS the said [A. B.] retired from the said partnership on the — day of —.]

XIII. CONVEYANCE OF FREEHOLDS AND LEASEHOLDS ON DISSOLUTION.

[AND WHEREAS it has been agreed that the said [C. D.] and [E. F.] shall continue to carry on the said business as co-partners as from the said — day of — last.

retirement of partner ;
retiring partner's share of agreement to purchase :

AND WHEREAS it has been agreed the said [C. D.] and [E. F.] shall pay to the said [A. B.] the sum of £— in full satisfaction for all his share and interest of and in the said partnership and the assets thereof.

AND WHEREAS for the purposes of stamp duty it has been agreed that the said sum of £— shall be apportioned, and that the sum of £—, part thereof, shall be taken to be the value of or consideration for the share of the said freehold and leasehold premises hereby assigned, and that such share shall be conveyed and assigned unto the said [C. D.] and [E. F.] in manner hereinafter appearing.] NOW THIS DEED WITNESSETH that [in pursuance of the said agreement, and] in consideration of the sum of £— to the said [A. B.] paid by the said [C. D.] and [E. F.] [out of partnership moneys] (c) (the receipt whereof is hereby acknowledged):—

of apportionment of price for purposes of stamp duty.

Testatum.

The said [A. B.] hereby releases [and as to his beneficial share and interest hereby as beneficial owner], conveys and assigns unto the said [C. D.] and [E. F.], ALL THAT all and singular the said freehold and leasehold premises specified in the first and second parts of the schedule hereto respectively: To HOLD the same freehold premises unto the said [C. D.] and [E. F.] in fee simple as joint tenants as part of their partnership property (d); AND TO HOLD the same leasehold premises unto the said [C. D.] and [E. F.] as joint tenants as part of their partnership property henceforth, during the residue of the said term of — years, at the rent and subject to the covenants in the said lease respectively reserved and contained, and on the lessee's part to be paid, performed, and observed.

Conveyance of freeholds and leaseholds.

Habendum.

Subject to covenants in lease.

IN WITNESS, &c.

(c) See sect. 22 of the Partnership Act, 1890.

(d) See L. P. A. 1925, s. 36 (1) and Sched. I. Part IV.

XIII. CON-
VEYANCE OF
FREEHOLDS
AND LEASE-
HOLDS ON
DISSOLUTION.

THE SCHEDULE HEREINBEFORE REFERRED TO.

PART I.

[*Freeholds.*]

PART II.

[*Leaseholds.*]

XIV. BOND *to secure* PAYMENT of INSTALMENTS of PURCHASE-MONEY of a SHARE of an OUTGOING PARTNER and INTEREST *thereon*, and to INDEMNIFY him against the LIABILITIES of the PARTNERSHIP.

Obligation
from continu-
ing partners
to retiring
partner.

KNOW ALL MEN BY THESE PRESENTS (*e*), that we, [A. B.], of, &c., and [C. D.], of, &c., are bound to [E. F.], of, &c., in the sum of £—— to be paid to the said [E. F.], or to his personal representatives, or to his or their attorney or attorneys; for which payment we jointly and severally bind ourselves by these presents: Sealed with our respective seals: Dated this —— day of ——.

Recitals:
of partner-
ship;

WHEREAS the said [A. B.], [C. D.] and [E. F.] have for some time past carried on the trade or business of —— in partnership, under the firm of “B. and Co.,” at —— aforesaid.

of deed of
dissolution
and assign-
ment of share;

AND WHEREAS by a deed bearing even date with these presents and expressed to be made between the said [E. F.], of the one part, and the said [A. B.] and [C. D.], of the other part, it has been agreed that the said partnership shall be deemed to be determined and dissolved, so far as relates to the said [E. F.], as from the —— day of ——, and by the same deed (among other things) the said [E. F.] has assigned unto the said [A. B.] and [C. D.] all the share and interest of him the said [E. F.] in the partnership business and in the stock in trade, goodwill, property,

Stamp.

(*e*) Stamp, *ad valorem* in respect of the sum, the payment of which is secured. This bond would also seem in strictness to be liable to *ad valorem* duty in respect of the share of the debts against which the retiring partner is thereby indemnified. But a 10s. stamp is generally regarded in practice as sufficient in respect of an indemnity by bond or covenant, where the amount of the debt is not stated.

effects, debts, and moneys belonging or owing to the partnership or to the said [A. B.], [C. D.], and [E. F.], or any of them in relation thereto.

AND WHEREAS upon the treaty for the said dissolution it was (among other things) agreed that the said [A. B.] and [C. D.] should execute and deliver to the said [E. F.] their bond in the penalty above mentioned, with such condition as is hereinafter mentioned.

NOW THE CONDITION of the above written bond is such that if the said [A. B.] and [C. D.], or one of them, should pay to the said [E. F.], or his personal representatives, the sum of £—— by the instalments following: that is to say, the sum of £—— on the —— day of —— next; the sum of £—— on the —— day of —— then next following; and the sum of £—— on the —— day of ——; together with interest after the rate of [5] per cent. per annum on each of the said days of payment for the said total sum of £——, or for so much thereof as at or immediately before the payment of such instalments respectively shall remain unpaid, without any deduction: AND shall also within —— calendar months from the date hereof pay and discharge all debts, liabilities, and engagements of the said partnership, to the payment, performance, or observance of which the said [A. B.], [C. D.], and [E. F.], or any of them, now are or may hereafter become liable, and keep indemnified the said [E. F.], his estates, and effects against all actions, proceedings, losses, damages, costs, expenses, claims, and demands whatsoever in respect thereof, and also against all costs, damages, and expenses by reason of any action or proceeding which may be brought or instituted by the said [A. B.] and [C. D.], or either of them, in the name or names of the said [E. F.], by virtue of the power in that behalf mentioned in the said deed of even date herewith, or of any act, matter, or thing relating thereto: Then the above written bond shall be void, otherwise the same shall be and remain in full force.

Signed, sealed, &c.

XIV. BOND TO
SECURE PUR-
CHASE-MONEY
OF SHARE IN
PARTNERSHIP
AND FOR
INDEMNITY.

of agreement
for bond.

Condition for
payment of
purchase-
money by
instalments,
with interest;

and for
indemnity.

XV. DEED OF
COVENANT TO
SECURE
CAPITAL OF
DECEASED
PARTNER.

XV. DEED of COVENANT by SURVIVING PARTNERS to secure a SHARE of CAPITAL of a DECEASED PARTNER left pursuant to the ARTICLES of PARTNERSHIP as a LOAN during the PARTNERSHIP TERM, the INTEREST to be INCREASED in proportion to INCREASE of PROFITS, &c.

Parties.

Recitals:
of articles of
partnership;

of death of
partner, will,
probate, &c.;

of general
account;

of payment
of share of
profits to
executors;

THIS DEED OF COVENANT (f), made the — day of —, 19—, BETWEEN [A. B.], of, &c., and [C. D.], of, &c., of the one part, and [executor] of, &c., and [executor], of, &c., of the other part: WHEREAS by articles of partnership made the — day of —, between the said [A. B.], of the first part, and [C. D.], of the second part, and [E. F.], deceased, of the third part, it was agreed that the parties thereto should become partners for the term of — years from the — day of —, in the trade or business of — under the style or firm of [B. & Co.], and it was thereby provided [*recite fully articles, that death of a partner should not dissolve a partnership, that on such death a general account and valuation should be taken, and that the share of the deceased partner should be left in the business as a loan to the partnership*].

AND WHEREAS the said [E. F.] died on the — day of —, having, by his will dated the — day of —, appointed the said [executor] and [executor] to be executors thereof, who duly proved the same will on the — day of —, in the Principal [District] Probate Registry of the High Court of Justice.

AND WHEREAS, pursuant to the provision in that behalf contained in the said articles of partnership, a general account and valuation of the property, assets, and credits and liabilities of the partnership have been made and taken, whereby it appears that the net value of the share of the said [E. F.], deceased, in the capital and assets of the said business amounts to £—.

AND WHEREAS all the share of profits arising from the said business and accrued due to the said [E. F.] up to the time of his death amounting to the sum of £— has been paid by the said [A. B.] and [C. D.] to the said executors (as they [the said executors] hereby acknowledge).

AND WHEREAS the said [A. B.] and [C. D.] intend to continue

Stamp.

(f) Stamp, *ad valorem*, as a mortgage, on the value of the share of capital left as a loan.

the said trade or business in partnership for the remainder of the said term under the said style or firm of [B. & Co.].

AND WHEREAS it has been agreed that the said sum of £—— (the ascertained value of the said share of the said [E. F.]) shall be continued in the business as a loan to the said [A. B.] and [C. D.] as such continuing partners as aforesaid, and that the repayment thereof with interest at the rate hereinafter mentioned shall be secured in manner hereinafter appearing.

NOW THIS DEED WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— so continued in the said business and lent to the said [A. B.] and [C. D.], such continuing partners as aforesaid (the receipt whereof is hereby acknowledged), it is hereby covenanted, agreed, and declared as follows:—

1. The said [A. B.] and [C. D.] hereby jointly and severally covenant with the said [*executors*] to pay to them on the —— day of —— [*the day of the expiration of the partnership term*] the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long thereafter as any principal money shall remain due under these presents to pay the said [*executors*] interest thereon at the same rate by equal half-yearly payments on the —— day of —— and the —— day of ——.

2. Whenever in any year the net profits of the said business shall, according to the annual general account for that year, appear to exceed the sum of £——, then the said [A. B.] and [C. D.], or the survivor of them, shall during the year next ensuing pay to the said [*executors*] one equal third part or share of the excess of the profits of the said business above such sum of £—— by way of additional interest by such equal half-yearly payments as aforesaid.

3. It shall be lawful for the said [*executors*], if and whenever they shall think proper, to take part in making and taking the annual general accounts and valuations directed to be made and taken by the articles, and at all such reasonable times as shall

XV. DEED OF
COVENANT TO
SECURE
CAPITAL OF
DECEASED
PARTNER.

of agreement
for leaving
deceased
partner's
capital in the
business.

Covenants by
surviving
partners;

to pay
principal
and interest.

Proviso for
payment of
additional
interest on
excess of
profits.

Proviso that
executors may
join in taking
accounts and
inspect books,
&c. (g);

(g) If it is not intended that the *executors* shall join in taking the accounts, the following provision may be substituted for that in the text:—

“The said [*executors*] shall not be entitled to take any part in

Proviso that
executors may

XV. DEED OF COVENANT TO SECURE CAPITAL OF DECEASED PARTNER.

but shall not interfere in management of business, nor be liable as partners.

Proviso for calling in principal on breach of articles.

Proviso that security shall not be affected by changes in the firm.

not join in taking accounts, &c.

be agreed upon to have access to and inspect the books, accounts, and other documents of the partnership relating to the said business, and at their own cost to make such copies thereof and such extracts therefrom respectively as they may think proper.

4. Nothing herein contained shall be deemed or construed so as to entitle the said [executors] to interfere otherwise in the management or conduct of the said business or render the said [executors] liable as partners (h).

5. If the said [A. B.] and [C. D.], or either of them, or any future partner or partners in the said firm, shall at any time manage or conduct the said business otherwise than pursuant to the said articles, or shall fail to observe any of the provisions and stipulations herein contained, or if the certified net profits of the said partnership shall fall in any year below the sum of £— after making provision for the payment of interest on the said sum of £—, then, and in any such case, the said principal sum of £—, and interest and additional interest (if any) then accrued due thereon, shall become payable on demand.

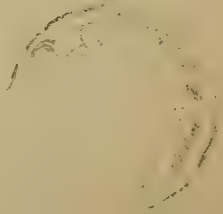
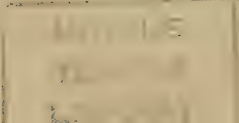
6. The security intended to be hereby effected shall not be in anywise prejudiced or affected whoever may be the persons for the time being constituting or concerned in the said firm or the business thereof, and under whatever style or firm the said trade or business of —, now carried on by the said [A. B.] and [C. D.], may be carried on.

IN WITNESS, &c.

the making and taking of the annual general accounts directed to be made and taken by the articles, but such accounts shall be audited immediately after the taking thereof by Messrs. —, who shall furnish the said [executors] with a proper balance sheet at the expense of the partnership, and such balance sheet shall be signed by the said [A. B.] and [C. D.], and shall be conclusive and binding on them."

(h) As to the effect of a covenant in an agreement of partnership to indemnify the estate of a deceased partner against debts, see *Bradford v. Gammon*, [1925] 1 Ch. 132.

Reat. 1975



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LC81

